

TITLE 7.

MARYLAND-WASHINGTON REGIONAL DISTRICT.

§ 7-101. Definitions.

(a) *In general.* — In this title the following words have the meanings indicated:

(b) *Road or roads.* — “Road” or “roads” means, relates to, and includes roads, highways, freeways, boulevards, parkways, streets, avenues, lanes, alleys, viaducts, bridges, and all other ways or part or parts thereof.

(c) *Park or parks.* — “Park” or “parks” means, relates to, and includes parks, playgrounds, play fields, and all other recreational grounds and spaces.

(d) *Subdivision.* — “Subdivision” means the division of a lot, tract, or parcel of land into two or more lots, plots, sites, tracts, parcels, or other divisions for the purpose, whether immediate or future, of sale or building development, and includes resubdivision and, when appropriate to the context, relates to the process of subdivision or to the land or area subdivided. The definition of “subdivision” does not include a bona fide division or partition of exclusively agricultural land not for development purposes. (1975, ch. 892; 1983, ch. 57, § 1; 1984, ch. 255.)

University of Baltimore Law Review. — For article, “Maryland’s Growing Pains: The Need for State Regulation,” see 16 U. Balt. L. Rev. 201 (1987).

Planning or zoning power or jurisdiction in Montgomery County. — The Regional District Act is now the exclusive source of zoning authority in Montgomery County, and any enactment concerning zoning in the County which is at variance with the Regional District Act is inoperative within the district; thus, the Express Powers Act, Article 25A, § 5 (X), authorizing chartered counties to enact laws relating to zoning and planning, has no application in Montgomery County. Council of

Chevy Chase View v. Rothman, 323 Md. 674, 594 A.2d 1131 (1991).

Authority to enact zoning ordinances or establish setback restrictions. — The express power vested in a special tax district to enforce “building . . . and other regulations,” including regulations with respect to the “erection of buildings” and “other police or health regulations,” did not authorize it “to enact zoning ordinances or to establish setback restrictions.” Council of Chevy Chase View v. Rothman, 323 Md. 674, 594 A.2d 1131 (1991).

Stated in Baltimore County v. Wesley Chapel Bluemount Ass’n, 110 Md. App. 585, 678 A.2d 100 (1996).

§ 7-102. Regional district continued.

The area in Montgomery and Prince George’s counties within the boundaries specified in this title is continued under a corporate agency for the purposes set forth in this title and elsewhere in this article. It is the same district and corporate agency as was created by Chapter 714 of the Acts of the General Assembly of Maryland of 1939 and continued by Chapter 992 of the Acts of the General Assembly of Maryland of 1943, and Chapter 780 of the Acts of the General Assembly of Maryland of 1959. It shall be known as the Maryland-Washington Regional District, and hereafter in this title it may be referred to as the “regional district” or as “district”. (1975, ch. 892; 1976, ch. 857, § 2; 1983, ch. 57, § 1.)

Cited in County Council v. Curtis Regency (1998), cert. denied, 351 Md. 5, 715 A.2d 964 Serv. Corp., 121 Md. App. 123, 708 A.2d 1058 (1998).

§ 7-103. Boundaries of regional district.

(a) *Montgomery County*. — The entire area of Montgomery County is within the regional district, subject to the provisions of § 7-105 of this title.

(b) *Prince George's County*. — The entire area of Prince George's County is within the regional district, with the exception of the City of Laurel, as its corporate boundaries are defined as of July 1, 1994. A municipal corporation within the areas added by this subsection to the Maryland-Washington Regional District is not authorized, by means of an amendment to its charter or otherwise, to exercise any of the powers relating to planning, subdivision control, or zoning granted by the Maryland-National Capital Park and Planning Commission or the County Council of Prince George's County. If this subsection for any reason is held by any court of competent jurisdiction to be invalid, it is declared to be the intention of the General Assembly that this subsection is severable and that the remaining portions of this subsection would have been enacted without the invalid portions. (1975, ch. 892; 1976, ch. 857, § 2; 1978, ch. 775; 1983, ch. 57, § 1; 1984, ch. 255; 1994, ch. 410.)

Stated in *County Council v. Curtis Regional Serv. Corp.*, 121 Md. App. 123, 708 A.2d 1058 (1998), cert. denied, 351 Md. 5, 715 A.2d 964 (1998).

Cited in *Mayor of Forest Heights v. Frank*, 291 Md. 331, 435 A.2d 425 (1981).

§ 7-104. Enlargement of regional district in Prince George's County.

(a) *Authorized*. — Any area in Prince George's County within any one election district which abuts territory within the regional district may be annexed to the Commission and included within the boundaries of the regional district, subject to laws and provisions appertaining thereto by ordinance adopted by the County Council of Prince George's County, and subject to the conditions hereinafter stated.

(b) *Petition to initiate proposal*. — The proposal for such inclusion shall be initiated by a written petition, signed by not less than 25 percent of the persons who reside in the area to be annexed and who are registered as voters in county elections, and by the owners of not less than 25 percent of the assessed valuation of the real property located in the area to be included. Upon the presentation of such a petition to the County Commissioners, the chairman shall cause to be made a verification of the signatures and shall ascertain that the persons signing the petition represent at least 25 percent of the persons who reside in the area to be included and who are registered as voters in county elections, and the owners of 25 percent of the assessed valuation of the real property located in the area to be included. Upon verifying that the requirements of this subsection have been complied with, the chairman of the County Council shall promptly cause to be introduced an ordinance proposing the change of boundaries as requested by the petition. The ordinance shall describe by a description of clearly ascertained boundary lines, by landmarks and other well-known terms consistent with the description of other areas included within the regional district, the exact area proposed to be included in

the change and briefly and accurately describing the conditions and circumstances applicable thereto.

(c) *Notice and hearing for ordinance of annexation.* — The ordinance may be adopted by a majority of the County Council at a hearing, after public notice of the hearing has been given and published not fewer than four times at not less than weekly intervals in a newspaper of general circulation in the area proposed to be annexed. The public notice shall briefly and accurately describe the proposed change and the conditions and circumstances applicable thereto. The public notice shall specify a time and place at which a public hearing will be held by the County Council on the proposed ordinance. The hearing shall be set for not less than seven days after the fourth publication of the notices and shall be held in the courthouse at Upper Marlboro, Maryland.

(d) *Enactment of ordinance.* — Following the public hearing the County Council may proceed to enact the ordinance in accordance with the usual requirements and practices applicable to its legislative enactments. The ordinance may not become effective until at least 45 days following its final enactment.

(e) *Petition for referendum.* — At any time within the 45-day period following the final enactment of the ordinance, a number of persons equal to not less than 20 percent of the persons who reside in the area and who are owners of not less than 20 percent of the assessed valuation of the real property located in the area to be included or annexed, and who are registered as voters in county elections, may in writing petition the chairman of the County Commissioners of Prince George's County for a referendum on the ordinance. Upon the presentation of a petition, the chairman shall cause to be made a verification of the signatures thereon and shall ascertain that the persons signing the petition represent at least 20 percent of the assessed valuation of the real property located in the area to be annexed, and are registered voters in county elections. Upon verifying that the requirements of this subsection have been complied with, the chairman of the County Commissioners shall suspend the effectiveness of the ordinance contingent upon the results of the referendum.

(f) *Notice and hearing for referendum.* — The chairman of the County Commissioners of Prince George's County shall set a date for the referendum on the ordinance which shall be not less than 15 days and not more than 90 days from the publication of notices therefor. These notices shall be published twice at not less than weekly intervals in a newspaper or newspapers of general circulation in the area to be annexed. The notices shall specify the time and place or places at which the referendum will be held. The place or places shall be within the limits of the area to be annexed for the referendum within that area.

(g) *Referendum.* — On the date and at the places specified, the ordinance proposing a change in the boundaries of the regional district shall be submitted to a referendum election of the qualified voters who reside in the area to be annexed and who are registered as voters in county elections. The ballots or the voting machines, as the case may be, shall contain a summary of the ordinance with suitable provisions for the voter to indicate a choice for or against it.

(h) *Definitions for section.* — For the purposes of this section, in any instance in which there are fewer than 20 persons living in any area proposed to be annexed who are eligible to sign a petition and to participate in a referendum election under the provisions of this section, any person owning real property in the area proposed to be annexed (the word "person" here including an association, the two or more joint owners of jointly owned property, a firm or corporation) shall have a right equal to that of a natural person to sign a petition or to participate in a referendum election.

(i) *When favorable vote effective.* — If a majority of the persons voting on the question in a referendum shall vote in favor of the proposal for change, the change shall become effective as proposed on the fourteenth day following the referendum.

(j) *Conduct and expenses of referendum.* — The County Council of Prince George's County may by ordinance, resolution, or regulation make proper provision for conducting and for tabulating the results of any referendum to be held under the provisions of this section. The county shall pay in full for the expenses for any such referendum. (1975, ch. 892; 1983, ch. 57, § 1.)

§ 7-105. Powers restricted in municipalities in Montgomery County.

(a) *Application of section.* — This section is applicable within the area of any municipal corporation subject to Article XI-E of the Constitution of Maryland lying in whole or in part within the area added to the regional district by Chapter 596 of the Acts of the General Assembly of 1957.

(b) *Planning or zoning powers.* — Except as provided by agreement under this section, neither the Commission nor the Montgomery County Planning Board nor the district council may exercise any planning or zoning power or jurisdiction within any municipal corporation that existed as of June 1, 1957, as provided under subsection (a) of this section. A municipality that incorporates after June 1, 1957 may not exercise planning, zoning, or subdivision power unless expressly provided for in this article.

(c) *Administrative tax.* — The administrative tax provided for in § 6-107 of this article may not be levied or collected in the municipal corporation, except as hereinafter provided.

(d) *Ordinances and regulations.* — The ordinances and regulations adopted by the district council or the Commission or the Montgomery County Planning Board do not apply to the area of the municipal corporation, except as hereinafter provided.

(e) *Other laws not to apply.* — Sections 7-115, 7-118, 7-119, 7-113, 8-118, 8-101, 8-107, 8-119, 8-112, and 8-109 of this article do not apply to the area of any such municipal corporation, except as hereinafter provided.

(f) *Agreements authorized.* — The Commission or the Montgomery County Planning Board is authorized to enter into an agreement with any municipal corporation providing for the exercise of the planning and zoning jurisdiction and powers of the Commission or the board within the area included in the municipal corporation.

(g) *Effect of agreement.* — Upon the execution of the agreement all the ordinances and regulations of the Commission or the Montgomery County Planning Board and the district council, in effect in the remainder of the regional district within Montgomery County, and all provisions of this title apply to the area included in the municipal corporation. The administrative tax provided for in § 6-107 of this article shall thenceforth be levied and collected within the area of the municipal corporation as the tax is levied and collected throughout the remainder of the regional district in Montgomery County.

(h) *Municipal governing body as district council.* — The agreement may contain a provision that the governing body of the municipal corporation shall act as the district council for the municipal corporation. In this case the governing body shall exercise solely within the area of the municipal corporation all the power granted to the district council by this title.

(i) *Recommendations to municipal corporation.* — The Commission or the Montgomery County Planning Board, whenever it deems proper, may submit recommendations to any municipal corporation with respect to any planning or zoning action under consideration by the municipal corporation, and the recommendation of the Commission or the board shall be incorporated as a part of the record of the action by the municipal corporation.

(j) *Termination of agreements.* — Any agreement entered into between the Commission or the Montgomery County Planning Board and any municipal corporation as provided in this section shall be irrevocable and shall remain in effect as written until and unless revoked or amended, as the case may be, by mutual action of the Commission or the Planning Board and the municipal corporation. (1975, ch. 892; 1983, ch. 57, § 1; 1984, ch. 255; 1987, ch. 11, § 1; 1992, ch. 643, § 1.)

Editor's note. — Section 3, ch. 643, Acts 1992, provides that "§ 1 of this Act may not be construed to alter any planning, zoning, or subdivision powers which an incorporated municipality is authorized to exercise within its boundaries as of the effective date of this Act."

Section 4, ch. 643, Acts 1992, provides that "this Act does not preclude any independent expenditure by any person, including any applicant, agent, or political action committee."

Section 5, ch. 643, Acts 1992, provides that "this Act may not be construed to prohibit an applicant or agent from making a contribution to any person other than a member of the

Prince George's County Council or the County Executive of Prince George's County, unless it is the intent of the applicant or agent to contribute indirectly to the member of the County Council or the County Executive."

Section 6, ch. 643, Acts 1992, provides that "this Act:

(1) Supersedes any Prince George's County ordinance dealing with subjects covered by this Act; and

(2) May not be supplemented by any Prince George's County ordinance."

Cited in *Mayor of Forest Heights v. Frank*, 291 Md. 331, 435 A.2d 425 (1981).

§ 7-106. Acquisition and transfer of land generally.

(a) *Land for highways, schools, libraries, parks, recreation centers, government buildings and other public uses.* — (1) The Commission may include in its annual budget provision for the acquisition of lands needed for any State highways, streets, roads, or mass transit facilities, including busways and light rail facilities, and for sites for schools, libraries, parks, recreation centers, government buildings, and other public uses in Montgomery County.

(2) The highway, street, road, mass transit facility, school site, library site, park site, recreation center site, government building site, or other public use to be acquired under this section shall be shown upon the Commission's general plan for the physical development of the regional district or an adopted plan and each such acquisition shall have received the approval by formal resolution of the district council of Montgomery County.

(3) A school site, library site, park site, recreation center site, government building site, or other public use, other than a State highway, street, road, or mass transit facility, may not be within a public construction program current at the time of acquisition.

(4) A school site may not be acquired under the terms of this section without the prior approval of the Montgomery County Board of Education.

(b) *Land acquisition revolving fund.* — For the purposes of this section the Commission may establish in its annual budget a continuing land acquisition revolving fund from which disbursements for the purposes of this section shall be made. None of the provisions in this article relating to unexpended balances applies to the land acquisition revolving fund.

(c) *Transfer and use of lands acquired.* — At any time after the acquisition, the Commission may transfer the land acquired in any case to any construction agency of the State, or to either county or to any incorporated municipality, as defined in § 8-104 (c) of this article, within either county, upon repayment to the Commission of the funds disbursed by the Commission for the land, plus interest. The amount of any repayment shall be placed in the land acquisition revolving fund. If the land acquired in any case is determined by the State construction agency for the county or municipality not to be required for the public use shown in the plan specified in subsection (a) (2) of this section, the Commission may use the land as a part of its park system, but such use by the Commission for park or recreation purposes is not a dedication for these purposes. If the land is determined by the Commission at any time not to be needed for park purposes the Commission may dispose of it in the manner provided elsewhere in this article.

(d) *Land for school sites, highways and other public uses in Prince George's County.* — (1) The Commission may include in its annual budget provision for the acquisition of lands needed for school sites, libraries, recreation centers, health services facilities, elder care facilities, and other public uses in Prince George's County, provided that land may not be acquired for any project that is within the capital budget of the approved capital improvement program of Prince George's County.

(2) Provision also may be made for acquisition of lands in Prince George's County needed for State highways, streets, roads, or mass transit facilities, including busways and light rail facilities, that are shown on adopted and approved master plans and are included in the Maryland twenty-year highway needs study.

(3) All land acquisitions shall be subject to passage of an ordinance by the County Council.

(e) *Serial bonds; property tax.* — For the purposes of this section, in Prince George's County and Montgomery County, the Commission may establish in its

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annual budget a continuing land acquisition revolving fund from which disbursements for the purposes of this section shall be made, and the Commission may issue and sell serial bonds from time to time in amounts it deems necessary for this purpose. However, in Prince George's County the County Council shall approve the Commission's issue and sale of bonds concerning that county. The total amount of the bonds outstanding at any time may not exceed an amount which can be redeemed within 30 years from the date of issue by means of a tax of 1.2 cents on each \$100 assessed valuation of real property in Prince George's County and Montgomery County and 3 cents on each \$100 assessed valuation of personal property and operating real property described in § 8-109 (c) of the Tax-Property Article; in making such calculation, assumptions may be made as set forth in § 6-101 (b) of this article. The provisions relating to form, interest rate, sale, redemption, guarantee, and liability contained in § 6-101 (serial bonds, notes, and other obligations) shall be equally applicable to bonds issued pursuant to the provisions of this section.

(1) (i) The Montgomery County Council may levy against all of the property assessed for the purposes of county taxation, annually a tax of not less than 0.4 cents or more than 1.2 cents on each \$100 of assessed valuation of real property and not less than 1 cent or more than 3 cents on each \$100 of assessed valuation of personal property and operating real property described in § 8-109 (c) of the Tax-Property Article. The tax shall be levied notwithstanding the fact that no interest may be due on the bonds or notes and/or notwithstanding the fact that no bonds or notes whatever have been issued under this title.

(ii) If a tax greater than 0.4 cents on real property or 1 cent on personal property and operating real property described in § 8-109 (c) of the Tax-Property Article is levied in any year, then thereafter the Montgomery County Council shall continue to levy a tax sufficient to pay the interest on the bonds as it becomes due and to pay the principal thereof as they mature, the tax in any one year not to exceed the limit heretofore provided. The tax need not be levied to the extent that funds are available from the sources to make the payments in any year and have been applied to or authorized for payment by the Commission.

(iii) Every 60 days the tax so levied and collected to date by the county shall be remitted to the Commission. All proceeds from the tax not used for debt service on the principal and interest of the bonds may be paid into the revolving fund for the uses specified in this section, or for payment of debt service bonds issued under this section. None of the provisions in this article relating to unexpended balances apply to the land acquisition revolving fund.

(2) The Prince George's County Council shall levy an annual amount on all property assessed for the purposes of county taxation sufficient to pay the interest on the bond as it becomes due and to pay the principal as the bonds mature if the Prince George's County Council has approved the issue and sale of these bonds.

(e-1) *Authorized taxes to be levied and collected as county taxes.* — Subject to § 6-111 of this article, the taxes authorized by this section shall be levied and collected in the same manner, have the same priority, bear the same interest, and be treated in all respects as county taxes.

(f) *Transfer and use of land acquired.* — At any time after the acquisition, the Commission may transfer the land so acquired in any case to any construction agency of the State of Maryland, to the county, to any incorporated municipality of Prince George's County, to the redevelopment authority of Prince George's County, or the revenue authority of Prince George's County, upon repayment to the Commission of the funds so disbursed by the Commission for the land, plus interest. The amount of the repayment shall be placed in the land acquisition revolving fund. If the land acquired in any case is determined, by the State construction agency for the county or municipality or by the redevelopment authority or revenue authority of Prince George's County, not to be required for public use, the Commission may use the land as a part of its park system, subject to the approval of the County Commissioners but this use by the Commission for park or recreation purposes is not a dedication for these purposes. If the land is determined by the Commission at any time not to be needed for park purposes the Commission may dispose of it in the manner provided elsewhere in this article.

(g) *Recommendations concerning real property sites.* — The Commission, upon request of the college's board of trustees, and in accordance with procedures contained in § 16-413 of the Education Article, may make recommendations to the board of trustees of the Montgomery Community College concerning real property sites appropriate for acquisition by the board which conform as far as practicable to development plans for land use in the county. (1975, ch. 892; 1976, ch. 857, § 2; 1977, ch. 589; 1978, ch. 537, § 2; 1979, ch. 615; 1983, ch. 57, § 1; ch. 451; 1984, ch. 255; 1988, ch. 99; 1989, ch. 5, § 1; 1992, ch. 643, § 1; 1994, ch. 633, § 1; 1996, ch. 10, § 16; 1997, ch. 264; 2000, ch. 80, § 2.)

Cross references. — See Editor's note to § 7-105 of this article.

Effect of amendments. — Chapter 80, Acts 2000, effective June 1, 2001, rewrote the third sentence of the introductory language of (e), and the first sentences of (e) (1) (i) and (ii).

Editor's note. — Section 2, ch. 264, Acts 1997, provides that "the provisions of this Act may not be construed to alter or affect any planning and zoning authority provided in Article 28 — Maryland-National Capital Park and Planning Commission of the Annotated Code of Maryland."

Section 3, ch. 264, Acts 1997, provides that "the provisions of this Act may not be construed to impair or abrogate:

(a) the bond authority of the Maryland-National Capital Park and Planning Commission; or

(b) the established rights and security for holders of any Commission bonds."

Section 5, ch. 80, Acts 2000, effective June 1, 2000, as amended by § 1, ch. 29, Acts 2001, approved April 10, 2001, and effective from date of enactment, provides that "for the taxable year beginning July 1, 2000, each county shall include the following statement on or with each real property tax bill:

Important Notice to Taxpayers

In order to make real property tax bills simpler and easier to understand, the General Assembly, under Chapter 80 of the Acts of 2000, has required that property tax rates on real property be based on a full cash value assessment. As a result, on October 1, 2000, your real property tax rates will be reduced to 40% of the rate effective July 1, 2000. As an example of how this will work for the taxable year beginning July 1, 2000, your county real property tax rate of \$ _____ per \$100 of assessment will be \$ _____ per \$100 of assessment on October 1, 2000. Your property taxes owed will remain the same unless changed by some other State or local legislative action."

Section 8, ch. 80, Acts 2000, effective Oct. 1, 2000, provides that "for the taxable year beginning July 1, 2001, notwithstanding § 8-134 of the State Finance and Procurement Article, the Board of Public Works shall certify rates of State tax on assessable property that reflect the changes in the method of assessing real property under this Act."

Section 11, ch. 80, Acts 2000, effective Oct. 1, 2000, provides that "notwithstanding § 9-105 (a) (5) and (e) (1) of the Tax-Property Article, for

the taxable year beginning July 1, 2001 only, the homestead property tax credit shall be computed by:

(1) Multiplying the taxable assessments for the taxable year beginning July 1, 2000 for State, county, or municipal purposes, respectively, by 2.5;

(2) Adding to item (1) of this Section any increase in phased-in value resulting from a revaluation under § 8-104 (c) (1) (iii) of the Tax-Property Article;

(3) Multiplying the sums of items (1) and (2) of this Section by the respective State, county, and municipal homestead credit percentages;

(4) Subtracting the amounts from the current year's assessment; and

(5) If the differences are positive numbers, multiplying the differences by the applicable State, county, or municipal rate for the current taxable year."

Section 12, ch. 80, Acts 2000, effective June 1, 2000, provides that "on or before October 1, 2000, the Department of Assessments and Taxation shall adopt regulations applicable to the taxable year beginning July 1, 2001 to adjust the valuation of use-valued property in a manner that would be revenue neutral relative to this Act. Notwithstanding § 8-104 (b) of the Tax-Property Article, the Department shall re-

value all use-valued property for the date of finality January 1, 2001 pursuant to the adjusted use valuation rates."

Section 14, ch. 80, Acts 2000, provides that "§ 2 of this Act shall take effect June 1, 2001 and shall be applicable to all taxable years beginning after June 30, 2001."

Tax in subsection (e) of this section is a mandatory tax. 64 Op. Att'y Gen. 35 (1979).

Football stadium development. — In the context of a proposed sale of certain property and its development as a professional football stadium and regional sports complex, subsection (f) of this section would not be violated if any portion of the property is sold to a private developer before it is first offered to certain governmental entities and, upon their declination, placed in the park system of the Maryland National Capital Park and Planning Commission. 81 Op. Att'y Gen. — (Aug. 1, 1996).

In the context of a proposed sale of certain property and its development as a professional football stadium, if any part of the property is sold to a private developer, subsection (f) of this section would not require that sale proceeds representing monies derived from the Land Acquisition Fund be returned to that Fund. 81 Op. Att'y Gen. — (Aug. 1, 1996).

§ 7-107. Publication of legal pamphlets and annual program reports.

The Commission (1) may prepare and publish one or more pamphlets setting forth the provisions of law administered by the Commission and all subdivision, zoning, and other regulations adopted or enacted by the Commission or the district council, together with annotations and maps the Commission deems appropriate; and (2) shall annually publish a report setting forth, in such detail as the Commission deems appropriate, the work of the Commission for the year, including its land acquisitions, financial transactions, personnel matters, litigation and disposition of violations, and other data and information. The Commission may charge a fee for the publication sufficient to cover in whole or in part the cost thereof. (1975, ch. 892; 1978, ch. 777; 1983, ch. 57, § 1.)

§ 7-108. Regional district plan and amendments.

(a) *General plan.* — (1) At the direction of the district council for Prince George's County or the district council for Montgomery County, as the case may be, hereinafter referred to in this section as the "appropriate district council", the Commission shall initiate and adopt a general plan for the development of that portion of the Maryland-Washington Regional District located in each county and, from time to time, shall initiate and adopt amendments thereto.

(2) The general plan and amendments shall contain the Commission's recommendations for such development, together with such descriptive or

supporting material as the appropriate district council may direct, or the Commission shall determine to be necessary and feasible.

(3) The appropriate district council, pursuant to the procedures set forth in this section, may direct the Commission to prepare the general plan, or amendments thereto, based on studies and the consideration of such elements, factors, and conditions as the following:

(i) Existing and forecasted population, including population distribution and other appropriate characteristics;

(ii) Existing and forecasted amount, type, intensity, general location, and characteristics of commercial, industrial, and public sector facilities, and employment related thereto;

(iii) Existing and forecasted type, amount, need and location of major public services, facilities, and utilities;

(iv) Staging or scheduling of development and capital improvements, and the fiscal or economic impact of same;

(v) Existing and forecasted transportation needs, facilities, routes, and systems;

(vi) Existing and forecasted needs and demand for housing, and the amount, type, quality, and general location of housing;

(vii) Existing land uses, forecasts of land absorption rates or markets, and analyses of the amount, general location, and interrelationships among different categories of land use;

(viii) Physical resources and conditions including, but not limited to, topography, soils, geology and mineral deposits, hydrology and waterways, wetlands and shorelines, water and air quality, climate, noise, open spaces, scenic areas, vegetation, forests, agricultural lands, fisheries, wildlife and wildlife habitats, and other areas of environmental or ecological importance or sensitivity;

(ix) Sites, structures, areas, or settings of archeological, historical, architectural, cultural, or scenic value or significance;

(x) Extent and general location of physically blighted or deteriorated areas and factors related thereto;

(xi) Evaluation of the probable consequences of major recommendations of the plan on the general physical and social environment and population of the regional district;

(xii) Estimates of the probable consequences on public revenues and expenditures of major recommendations of the plan; and

(xiii) Any other matter, element, factor, or condition determined by the district council or Commission to be necessary and feasible to the preparation or presentation of the general plan.

(4) The appropriate district councils may provide, to the extent necessary and feasible:

(i) That the Commission shall consider various alternative concepts of growth or development in preparing the general plan, and shall appropriately describe the alternatives so considered; and

(ii) That the general plan shall include such chapters or sections as may be necessary to contain and explain its recommendations with respect to any element, factor, or condition set forth in this paragraph and paragraph (3) of this subsection.

(5) The general plan may be amended, extended, added to, or revised from time to time by the initiation and adoption of appropriate amendments to it by the Commission. Any functional master plan, local area master plan, or any amendment thereto shall be an amendment to the general plan if so designated by the appropriate district council.

(6) The material in paragraphs (3) and (4) of this subsection shall be considered as guidelines concerning the basis, contents, and considerations of the general plan, functional master plans, local area master plans, or any amendment thereto, and the plans or any amendments thereto shall not be deemed null and void, inapplicable or inoperative on the ground that the basis, contents, or considerations thereof are not consistent with this article; provided that nothing in this subsection shall prevent, in a judicial review on the record of a governmental action concerning development, consideration of the reasonableness of a plan or its appropriateness and completeness in relation to the governmental action and review.

(b) *Local planning areas and local master plans.* — (1) The appropriate district council shall provide for its county, pursuant to the procedures set forth in this section, to the extent necessary and feasible:

(i) That the Commission shall initiate and adopt, and the district council shall approve and from time to time amend a map showing the entire area of that county within the regional district, divided into local planning areas. Prior to the approval or amendment of the map, the district council shall consult with the Commission with respect to the boundaries of the local planning areas located wholly or partially within that county and, in the event of disagreement as to boundaries, the decision of the district council shall prevail within the area of its jurisdiction;

(ii) That, in accordance with the work program and budget adopted by the county council of that county, the Commission shall initiate and adopt, and from time to time may amend or revise, a local master plan for each planning area, any part thereof, or any combination of contiguous planning areas;

(iii) That a local master plan may include recommendations for zoning, staging of development and public improvements, and public services relative to the implementation of the plan;

(iv) That a local master plan shall be based upon and include in greater detail, but need not be limited to, the same factors, elements, and conditions as contained in the general plan and amendments thereto; and

(v) That a local master plan or any amendment thereto, adopted hereafter, shall show on a map contained within the plan, the boundary of the area within which it applies.

(2) A local master plan or any amendment thereto shall be, upon adoption by the Commission and approval by the appropriate district council, an amendment to the general plan if so designated by that district council.

(3) Any plan adopted prior to the approval of, or any amendment to, the planning area map shall continue in force and shall not be invalidated by the fact that its boundaries do not correspond to the boundaries as shown on the planning area map.

(c) *Functional master plans.* — (1) The Commission may make and adopt and from time to time amend, and the district councils may approve and

amend, functional master plans for the various elements of the general plan, including but not limited to master plans of highways, mass transit that includes light rail and busways, hospitals and health centers, parks and other open spaces, police stations, fire stations, and utilities. Before adopting or amending any functional master plan of highways or transportation lines in Prince George's County, the Commission shall submit its proposed plan or amendment to the district council and to the County Executive for review and comment. The Executive and council shall have 60 days to review and provide written comments. The adopted plan may not include a highway or transportation line unless the district council, after consultation with the County Executive, approves by resolution, the inclusion of the highway or transportation line for planning purposes.

(2) Each functional master plan, or any amendment thereto, shall be an amendment to the general plan if so designated by the appropriate district council.

(d) *Initiation and adoption of plans and amendments.* — (1) *Initiation.* The Commission may initiate any plan or part thereof with the concurrence of the district council of the county or counties in which the area of the proposed plan is located, provided that review of the Commission's proposed budget by the district council and approval of the planning schedule which shall be contained therein shall constitute concurrence in the initiation of plans proposed in the budget for any single fiscal year. The district council may modify or change the schedule contained in the proposed budget. Further, the district council may direct the Commission to initiate any plan or part thereof, and the Commission shall initiate the plan with reasonable promptness to the extent funds are available for this purpose.

(2) *Procedures in Montgomery County.* — (i) The district council shall establish by ordinance or subsequent amendment thereto, after public hearing, (30 days' notice of the time and place of which shall be given by at least one publication in a newspaper of general circulation in the county), procedures for the submission, adoption, approval, and amendment of any plan or part thereof by the Commission. The procedures may include requirements for submission to and approval by the district council of preliminary concepts, guidelines, goals, or plans. The procedures shall include provision for adoption and amendment of plans by the Commission after at least one public hearing thereon, 30 days' notice of the time and place which shall be given by at least one publication in a newspaper of general circulation in the county. They may also include procedures for the approval of each plan or amendment thereto by the district council; and shall include a method for the certification and filing of the plan by the Commission in the office of the clerk of the Circuit Court of Montgomery County and provisions for publication by the Commission of adopted and approved plans. Any plans heretofore adopted shall remain in effect according to present provisions unless or until amended or superseded pursuant to procedures established under the provisions of this article. The existing provisions of the Maryland-Washington Regional District Law (§ 63 of Chapter 780 of the Laws of Maryland 1959, as amended) repealed by Chapter 711 of the Laws of Maryland 1969 relating to procedural matters shall remain

in full force and effect unless or until specifically superseded or amended in accordance with the power and authority granted herein. This subsection is intended to vest control over planning procedures in the respective district councils, to the extent that control is not inconsistent with other provisions of the Regional District Act, and nothing contained herein shall be deemed to authorize any transfer or dilution of planning authority and responsibility now vested in the Commission, planning boards, and district councils.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, on the initiation of a master plan or amendment to a master plan by the Commission, the Commission shall notify the County Executive of its work schedule. The County Executive shall provide, as early as possible, information on matters including transportation, water and sewer, other public facility and services portions, and fiscal portions of the plan or amendment. The County Executive may furnish such other studies, data, and information as the County Executive deems pertinent to the preparation of the plan or amendment. On completion of the plan or amendment, the planning board shall transmit the plan or amendment to the district council, and also transmit copies of the plan or amendment to the County Executive. Within 60 days, the County Executive shall transmit a fiscal impact analysis to the district council with any other comments and recommendations the County Executive deems appropriate. Within 180 days after the receipt of the County Executive's comments, recommendations, and fiscal impact analysis, the district council shall approve, modify, or disapprove the plan or amendment. On a vote of two-thirds of those present and voting, the district council may extend by 60 days the previous requirement of 180 days for review and action on a plan or amendment. On a vote of two-thirds of those present and voting, the district council may extend further its time limit for review and action on a plan or amendment in sequential 60-day intervals. Failure of the district council to act within the time limits imposed shall constitute approval of the plan or amendment as submitted by the planning board.

(3) *Procedures in Prince George's County.* The district council shall establish by ordinance or subsequent amendment thereto after public hearing (30 days' notice of the time and place of which shall be given by at least one publication in a newspaper of general circulation in the county), procedures for initiation, submission and adoption, and amendment of any plan or part thereof by the Commission, and for the approval or amendment of any plan or part thereof by the district council. The procedures shall include requirements for approval by the district council of preliminary concepts, guidelines, and goals. The procedures shall include review of preliminary plans by the district council and the County Executive, to identify any inconsistencies between the plan and existing or proposed State or county facilities including roads, highways, or other public facilities. In the event any inconsistencies are revealed, the district council shall direct the Commission on how the inconsistencies shall be eliminated or accommodated within the plan. The procedures shall provide for one or more public hearings on the plan to be held jointly by the Commission and the district council, at the direction of the district council, after 30 days' notice by publication in a newspaper of general circulation in the county. The

procedures shall include provision for adoption and amendment of plans by the Commission after the hearing, and for the amendment and approval of the plan by the district council. The procedures shall include a method for the certification and filing of an approved plan in the office of the clerk of the Circuit Court for Prince George's County, and provisions for publication by the Commission of adopted and approved plans.

Any plans heretofore adopted shall remain in effect according to present provisions unless or until amended or superseded pursuant to procedures established under the provisions of this article. The existing provisions of the Maryland-National Regional District Law (§ 63 of Chapter 780 of the Laws of Maryland 1959, as amended) repealed by Chapter 711 of the Laws of Maryland 1969 relating to procedural matters shall remain in full force and effect unless or until specifically superseded or amended in accordance with the power and authority granted herein. This subsection is intended to vest control over planning procedures in the respective district councils, to the extent that control is not inconsistent with other provisions of the Regional District Act, and nothing contained herein shall be deemed to authorize any transfer or dilution of planning authority and responsibility now vested in the Commission planning boards, and district council.

(4) *Adoption.* The adoption or amendment of any plan shall be by resolution of the Commission carried by the affirmative votes of not less than six members of the Commission, of whom not less than three members shall be from Montgomery County and not less than three members from Prince George's County. However, for the adoption or amendment of a local master plan or a functional master plan which lies entirely within one county the affirmative votes of three members from that county shall prevail and be sufficient to adopt the plan. The resolution on the adoption or amendment of the plan shall refer expressly to the maps and descriptive and other matter intended by the Commission to form the whole or part of the plan, and the action taken shall be recorded on the map, plan, or descriptive matter by the identifying signature of the chairman and secretary-treasurer of the Commission.

(e) *Plans identifying historic sites, structures, etc.* — The Commission may make and adopt and, from time to time, amend a plan which shall identify and designate sites, structures with their appurtenances and environmental settings, or districts having a historical, archeological, architectural or cultural value, provided that the criteria for the designation or identification is not inconsistent with the criteria applicable to the Maryland Historical Trust under Article 83B, § 5-605 of the Annotated Code of Maryland. In making or amending of the plan, the Commission may establish advisory committees to assist it in the performance of its duties. The plan shall constitute an amendment to the general plan for the Maryland-Washington Regional District except that the plan may include sites, structures with their appurtenances and environmental settings, or districts located in municipalities within Montgomery and Prince George's counties, not subject to the jurisdiction of the Commission, with the consent of the governing body of that municipality. Consent of the governing body shall constitute the agreement of the municipality to be bound by all rules and regulations governing such sites,

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structures with their appurtenances and environmental settings, or districts as may be enacted by the district council. (1975, ch. 892; 1978, chs. 153, 779; 1979, ch. 667; 1980, ch. 712, § 2; 1983, ch. 57, § 1; 1984, ch. 255; 1986, ch. 5, § 4; chs. 534, 535; 1987, ch. 11, § 2; ch. 311, § 6; 1988, ch. 6, §§ 1, 8; ch. 98; 1990, ch. 629; 1992, ch. 643, § 1.)

Cross references. — See Editor's note to § 7-105 of this article.

University of Baltimore Law Review. — For article, "Maryland's Growing Pains: The Need for State Regulation," see 16 U. Balt. L. Rev. 201 (1987).

Legislative policy precludes antitrust liability of county for enacting zoning ordinance. — Provisions of the Regional District Act constitute a clearly articulated and affirmatively expressed State policy to displace free competition among landowners and users of land with local regulation by zoning and planning, so that Prince George's County is immune from antitrust liability for enacting zoning ordinance and denying special exception. *Racetrac Petro., Inc. v. Prince George's County*, 601 F. Supp. 892 (D. Md. 1985), aff'd, 786 F.2d 202 (4th Cir. 1986).

Sectional map amendment need not adhere to general or master plan. — There is no requirement, absent a statute, that a sectional map amendment must adhere to the recommendations of the general or master plan, since such documents represent only a basic scheme generally outlining planning and zoning objectives in an extensive area, and are continually subject to modification in the light of actual land use development. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 376 A.2d 483 (1977), cert. denied, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

Distinction between "zoning" and "planning." — See *JMC Constr. Corp. v. Montgomery County*, 54 Md. App. 1, 456 A.2d 931 (1983).

Rejection of preliminary subdivision plan failing to comply with obligatory master plan. — When subdivision regulations require that a proposed subdivision comply with the master plan, an application for approval of a preliminary subdivision plan that fails to so comply must be rejected. *Coffey v.*

Maryland-National Capital Park & Planning Comm'n, 293 Md. 24, 441 A.2d 1041 (1982).

Initiation, adoption or veto of plans and amendments by County Executive. — Proposed amendment to section of county charter stating that the section should not be construed to authorize the County Executive to veto master plans or master plan amendments was in conflict with paragraph (d) (2) of this section and, therefore, invalid under Md. Constitution, Article XI-A, § 1. *Montgomery County v. Board of Supvrs. of Elections*, 311 Md. 512, 536 A.2d 641 (1988).

Approval of amendment while appealing previous rejection. — Developer could seek approval of project plans under amended development guidelines where his previous approvals were held invalid because of ineffective development guidelines, and submission of revised plans did not render moot his appeal on the rejection of his original plans. *Montgomery County v. Singer*, 321 Md. 503, 583 A.2d 704 (1991).

Stated in County Council v. Curtis Regency Serv. Corp., 121 Md. App. 123, 708 A.2d 1058 (1998), cert. denied, 351 Md. 5, 715 A.2d 964 (1998).

Applied in West Montgomery County Citizens Ass'n v. Maryland-National Capital Park & Planning Comm'n, 309 Md. 183, 522 A.2d 1328 (1987); *Boyds Civic Ass'n v. Montgomery County Council*, 309 Md. 683, 526 A.2d 598 (1987); *Coscan Wash., Inc. v. Maryland-Nat'l Capital Park & Planning Comm'n*, 87 Md. App. 602, 590 A.2d 1080, cert. denied, 324 Md. 324, 597 A.2d 421 (1991).

Cited in Maryland-National Capital Park & Planning Comm'n v. Chadwick, 286 Md. 1, 405 A.2d 241 (1979); *Hirsch v. Maryland Dep't of Natural Resources*, 288 Md. 95, 416 A.2d 10 (1980); *Montgomery County v. Horman*, 46 Md. App. 491, 418 A.2d 1249 (1980).

§ 7-108.1. Planning and zoning.

(a) *Planning and zoning controls — Policy of State.* — It has been and shall continue to be the policy of this State that the orderly development and use of land and structures requires comprehensive regulation through implementation of planning and zoning controls.

(b) *Same — Implementation by local government.* — It has been and shall continue to be the policy of this State that planning and zoning controls shall be implemented by local government.

(c) *Effect on economic competition.* — To achieve the public purposes of this regulatory scheme, the General Assembly recognizes that local government action will displace or limit economic competition by owners and users of property.

(d) *Attainment of public policy goals.* — It is the policy of the General Assembly and of this State that competition and enterprise shall be so displaced or limited for the attainment of the purposes of the State policy for implementing planning and zoning controls as set forth in this article and elsewhere in the public local and public general laws.

(e) *Construction of Commission powers.* — The powers granted to the Commission and district councils pursuant to this section shall not be construed:

(1) To grant to the Commission and district councils powers in any substantive area not otherwise granted to the Commission and district councils by other public general or public local law;

(2) To restrict the Commission and district councils from exercising any power granted to the Commission and district councils by other public general or public local law or otherwise;

(3) To authorize the Commission and district councils or its officers to engage in any activity which is beyond their power under other public general law, public local law, or otherwise; or

(4) To preempt or supersede the regulatory authority of any State department or agency under any public general law. (1983, ch. 395.)

Legislative policy precludes antitrust liability of county for enacting zoning ordinance. — Provisions of the Regional District Act constitute a clearly articulated and affirmatively expressed State policy to displace free competition among landowners and users of land with local regulation by zoning and plan-

ning, so that Prince George's County is immune from antitrust liability for enacting zoning ordinance and denying special exception. *Racetrac Petro., Inc. v. Prince George's County*, 601 F. Supp. 892 (D. Md. 1985), *aff'd*, 786 F.2d 202 (4th Cir. 1986).

§ 7-109. Cooperation with National Capital Planning Commission and other governmental agencies.

In the preparation and making of the plan and in the exercise of the zoning, planning, subdivision control, and other powers granted to it in this title, the Commission may act in conjunction and cooperation with the National Capital Planning Commission, created by act of Congress approved April 30, 1926, as amended. The Commission is designated as the representative of the State of Maryland, and for these purposes the Commission may enter into commitments and agreements with the National Capital Planning Commission as may in the discretion of the Commission seem necessary. The Commission further may act in conjunction and cooperation with other representatives or officers of the United States government or of the District of Columbia or of the State of Maryland, including the Maryland State Planning Commission and the Washington Suburban Sanitary Commission, or of the State of Virginia or of Montgomery or Prince George's County or of any district, municipality, or other local or district subdivision within these counties or within these states. (1975, ch. 892; 1976, ch. 857, § 2; 1983, ch. 57, § 1; 1984, ch. 255.)

§ 7-110. Purposes of general plan and amendments.

The making of the general plan, including its parts, amendments, extensions, or additions, the protection of and the carrying out of the plan, and the exercise of all planning, platting, zoning, subdivision control, and all other powers granted in this title to the Commission or to the County Council of Montgomery County or the County Commissioners of Prince George's County shall be with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, the coordination and adjustment of this development with public and private development of other parts of the State of Maryland and of the District of Columbia, and the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district. (1975, ch. 892; 1983, ch. 57, § 1.)

University of Baltimore Law Review. — For article, "Maryland's Growing Pains: The Need for State Regulation," see 16 U. Balt. L. Rev. 201 (1987).

Protection and promotion of health and welfare. — Section 8-101 (b) (2) of this article requires, at least implicitly, that the County Council carry out its delegated zoning powers for the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the county. *Levinson v. Montgomery County*, 95 Md. App. 307, 620 A.2d 961, cert. denied, 331 Md. 197, 627 A.2d 539 (1993).

Legislative policy precludes antitrust liability of county for enacting zoning ordinance. — Provisions of the Regional District Act constitute a clearly articulated and affirmatively expressed State policy to displace free competition among landowners and users of land with local regulation by zoning and plan-

ning, so that Prince George's County is immune from antitrust liability for enacting zoning ordinance and denying special exception. *Racetrac Petro., Inc. v. Prince George's County*, 601 F. Supp. 892 (D. Md. 1985), aff'd, 786 F.2d 202 (4th Cir. 1986).

Decision based solely on aesthetic reasons is invalid, whether it completely prohibits or only partially prohibits certain acts; whether the planning board may regulate the type of material used in constructing homes depends on whether there were legitimate reasons for regulating building materials other than aesthetics. *Coscan Wash., Inc. v. Maryland-National Capital Park & Planning Comm'n*, 87 Md. App. 602, 590 A.2d 1080, cert. denied, 324 Md. 324, 597 A.2d 421 (1991).

Quoted in *Baltimore County v. Wesley Chapel Bluemount Ass'n*, 110 Md. App. 585, 678 A.2d 100 (1996).

§ 7-111. County planning boards.

(a) **Membership and powers.** — The members of the Commission appointed by the governing bodies of each county are designated the Montgomery County Planning Board and the Prince George's County Planning Board, respectively. They are responsible for planning, platting, and zoning functions primarily local in scope, as distinguished from the regional planning functions of the Commission relating to or affecting the regional district as a planning unit. The local functions exclusively within the jurisdiction of the respective planning boards include, but are not limited to, the administration of subdivision regulations, the preparation and adoption of recommendations to the district council with respect to zoning map amendments, and the assignment of street names and house numbers within the regional district. The respective county planning boards have exclusive jurisdiction over mandatory referrals made pursuant to § 7-112 of this title by their respective county governments or any agency thereof; and, as to the Montgomery County Planning Board, by the County Board of Education, by any municipality or special taxing district,

or by any public utility, whether publicly or privately owned. The Montgomery County Planning Board shall review the annual capital budgets of the county and future projections thereof and submit recommendations to its county governing body, provided that the responsibility for preparing the capital budgets and programs of public works shall be vested in the county government and its administrative, fiscal, and planning staffs and not in the staff of the Commission and the county planning board. The county planning boards shall meet from time to time with their respective county governing bodies and perform surveys, studies, and other planning duties the governing bodies assign to them.

(b) *Regional functions; procedure for Commission.* — The regional functions within the jurisdiction of the Commission include, but are not to be limited to, preparation, adoption, and amendment of the general plan for the physical development of the district, or parts thereof, in accordance with § 7-108 of this title; and mandatory referrals from the United States or the State of Maryland, or any agency thereof, pursuant to § 7-112 of this title. The Commission and the county planning boards, or either of them, may recommend to the proper authorities text amendments to the zoning ordinances, subdivision regulations, and any other rules and regulations authorized in this title. The adoption of a resolution or recommendation respecting a regional matter shall be carried by the affirmative votes of not less than six members of the Commission, of whom not less than three members shall be from Montgomery County and not less than three members from Prince George's County. However, when a regional plan affects one county only, the affirmative vote of three members of the local planning board for the county affected shall be controlling. Within its jurisdiction, each county planning board shall have and exercise the powers in regard to planning, zoning, subdivision control, platting, the assignment of street names and house numbers, and related matters, heretofore exercised by the Commission under this title.

(c) *Jurisdiction over personnel of planning boards; Prince George's County; Montgomery County.* — (1) Each planning board shall have administrative control and jurisdiction over personnel performing the duties and functions assigned in this section to the respective planning boards.

(2) (i) In this paragraph, "deputy director" includes any position comparable to the position of a deputy director, as determined by the Prince George's County Planning Board.

(ii) In Prince George's County, a director or deputy director of a department shall have education or professional experience in a field relevant to the responsibilities of that department.

(iii) A director or deputy director shall receive the compensation established in the budget for the Prince George's County Planning Board.

(iv) 1. Except as provided in item 2 of this subparagraph, a director or deputy director shall be appointed by and serve at the pleasure of the Prince George's County Planning Board.

2. In Prince George's County, an individual may elect to remain in the merit system established under § 2-112 of this article if:

A. On June 30, 1991, the individual is a director of planning or a director of parks and recreation; or

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B. On June 30, 1996, the individual is a deputy director of planning or a deputy director of parks and recreation.

(3) (i) Subject to subparagraph (ii) of this paragraph, in Montgomery County, a director serves at the pleasure of the Montgomery County Planning Board.

(ii) Any individual who, on July 1, 1995, held a position affected by this paragraph may elect to remain in the merit system established under § 2-112 of this article.

(d) *Parks and park lands excepted.* — Nothing in this section may be deemed to affect powers and duties of the Commission with respect to parks and park lands. The Commission, however, may delegate to the respective planning boards such powers and duties with respect to parks and park lands as the Commission may, from time to time, determine. The Prince George's County Planning Board shall provide a program of recreation within Prince George's County, and coordinate the program with the Commission's park functions.

(e) *Expenses of local planning boards.* — The expenses of operation of the respective local planning boards shall be paid from the proceeds of the administrative tax collected for the Commission and from funds appropriated, in addition thereto, by the respective county governing bodies.

(f) *Allocation of other functions.* — Functions not specifically allocated in this section shall be assigned by resolution of the Commission with the approval of the respective county governing bodies either to the Commission itself or to one or both of the county planning boards, as the occasion may arise, so as to effectuate the concept that planning functions which are essentially local or intracounty should be performed by the county planning boards.

(g) *Compensation of local planning board members.* — (1) Notwithstanding other provisions of this article, funds may be included in the Commission's annual budget and appropriated by the respective county governing bodies to provide an annual salary for each planning board member, other than a full-time member, as compensation for the planning board member's services.

(2) The Montgomery County Council and the Prince George's County Council may each establish the salary for a planning board member from that county, other than a full-time member, by county law separate from budget action, after notice and public hearing.

(h) *Montgomery County.* — In Montgomery County, to the extent authorized by county law, ordinance, or resolution, the planning board may:

(1) Administer and enforce any adopted growth policy or forest conservation program; and

(2) Provide staffing assistance on matters relating to the promotion of historic preservation. (1975, ch. 892; 1979, ch. 60; 1982, ch. 220; 1983, ch. 57, § 1; 1987, ch. 11, § 1; ch. 691; 1990, ch. 191; 1991, ch. 554; 1992, ch. 643, § 1; 1996, chs. 484, 486; 2002, ch. 386.)

Cross references. — See Editor's note to § 7-105 of this article.

Effect of amendments. — Chapter 386, Acts 2002, effective June 1, 2002, deleted "of \$12,900" following "salary" in (g) (1); and added (g) (2).

Editor's note. — Section 2, ch. 386, Acts 2002, provides that "pursuant to Article III, § 35 of the Constitution of Maryland, this Act may not be construed to extend or apply to the salary or compensation of the part-time members of the Montgomery County planning board

or the Prince George's County planning board in office on June 1, 2002, but the provisions of this Act concerning the salary or compensation of the part-time members of the Montgomery County planning board or the Prince George's County planning board shall take effect at the beginning of the next following term of office."

Quoted in Maryland-National Capital Park & Planning Comm'n v. Washington Bus. Park Assocs., 294 Md. 302, 449 A.2d 414 (1982); Maryland-National Capital Park & Planning Comm'n v. Smith, 333 Md. 3, 633 A.2d 855 (1993).

Stated in Colao v. County Council, 346 Md. 342, 697 A.2d 96 (1997).

Cited in Montgomery County v. Woodward & Lothrop, Inc., 280 Md. 686, 376 A.2d 483 (1977), cert. denied, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978); Boyds Civic Ass'n v. Montgomery County Council, 309 Md. 683, 526 A.2d 598 (1987); Montgomery County v. Board of Supvrs. of Elections, 311 Md. 512, 536 A.2d 641 (1988); Montgomery County v. Singer, 321 Md. 503, 583 A.2d 704 (1991).

§ 7-112. Mandatory referrals and approval procedures after adoption of master plan of highways.

When the Commission has adopted a master plan of highways of the regional district and has certified the plan to the County Council and clerk of the Circuit Court of Montgomery County and to the Board of County Commissioners and clerk of the Circuit Court of Prince George's County, thereafter no road, park, or other public way or ground, no public (including federal) buildings or structures, and no public utility, whether publicly or privately owned, shall be located, constructed, or authorized in the regional district until and unless the proposed location, character, grade, and extent thereof has been submitted to and approved by the Commission. In case of disapproval, the Commission shall communicate its reasons to the State, federal, county, municipal, or district board, body, or official proposing to locate, construct, or authorize such public way, ground, building, structure, or utility. Thereupon the board, body, or official in its discretion may overrule the disapproval and proceed. The widening, extension, relocation, narrowing, vacation, abandonment, change of use of any road, park, or other public way or ground in the regional district, or the acquisition or sale of any land in the regional district by any public board, body, or official shall be subject to similar submission and approval; and the failure to approve may be similarly overruled. The failure of the Commission to act within 60 days from and after the date of official submission to it shall be deemed an approval, unless a longer period be granted by the submitting board, body, or official. After appropriate public hearings, the Commission shall adopt uniform standards of review to be followed in reviewing changes to public property located in the regional district. The Commission shall publish a notice of the adoption of the standards of review in one newspaper of record that is published in each county. The notice shall include a summary of the purpose of the standards and the review process. The notice also shall identify a location and a phone number to contact for a complete copy of the standards of review. (1975, ch. 892; 1983, ch. 57, § 1; 2001, ch. 276.)

Effect of amendments. — Chapter 276, Acts 2001, effective Oct. 1, 2001, added the last four sentences.

"Public." — The word "public" encompasses only the federal, State and local governments. Pan Am. Health Org. v. Montgomery County, 338 Md. 214, 657 A.2d 1163 (1995).

Mechanisms for land use planning. — The Regional District Act establishes two mechanisms for land use planning: the first mechanism is through zoning and the second mechanism is the mandatory referral process. Pan Am. Health Org. v. Montgomery County, 338 Md. 214, 657 A.2d 1163 (1995).

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Zoning legislation affecting international organization. — The County Council for Montgomery County, sitting as the District Council, had the authority under State law to enact zoning legislation that had the effect of prohibiting the Pan American Health Organization from locating its headquarters in a residentially-zoned area in Montgomery County. *Pan Am. Health Org. v. Montgomery County*, 338 Md. 214, 657 A.2d 1163 (1995).

Montgomery County has the power to enact zoning restrictions that apply to international organizations and Maryland law does not confer on the Pan American Health Organization

any immunity from such restrictions. *Pan Am. Health Org. v. Montgomery County*, 338 Md. 214, 657 A.2d 1163 (1995).

Despite early assurances from county and regional officials that the Pan American Health Organization would be treated as "public" for purposes of the then applicable zoning laws, the organization is not, under Maryland law or the United States Constitution, a public agency beyond the reach of the local zoning authority. *Pan Am. Health Org. v. Montgomery County*, 889 F. Supp. 234 (D. Md. 1994), aff'd, 59 F.3d 167 (4th Cir. 1995).

§ 7-113. Road grades.

The Commission may establish grades for all roads within the regional district, but in Montgomery County all road grades established shall be established within the tolerances set forth in the provisions of the Montgomery County Road Code. In Prince George's County, the authority to establish road grades shall be administered by the county department of public works and transportation. Until a grade has been established by the Commission, or the county department as appropriate, no grading of a permanent nature shall be made. Any unauthorized grading of a permanent nature by any State, municipal or county officer or employee or by any private person is declared to be a misdemeanor and punishable as such under the provisions of this article. (1975, ch. 892; 1980, ch. 794; 1983, ch. 57, § 1.)

§ 7-114. Water mains, sewers or other utilities and improvements only for improved roads.

Repealed by Acts 1985, ch. 417, effective July 1, 1985.

§ 7-115. Plats of subdivisions of land generally; street dedication.

(a) *Approval of Commission required; annexation of subdivision by municipality.* — (1) Except as provided in paragraph (3) of this subsection, no plat of any subdivision of land within the regional district shall be admitted to the land records of either Montgomery or Prince George's County, or received or recorded by the clerks of the courts of these counties, until the plat has been submitted to and approved by the Commission and the approval endorsed in writing on the plat by its chairman and secretary. The filing or recordation of a plat of a subdivision without the approval of the Commission is void.

(2) If the subdivision regulations provide for a distinction between major subdivisions and minor subdivisions, in Prince George's County, the Commission may provide for approval of minor subdivision plats by the planning director. The planning director's endorsement in writing on the plat shall be sufficient evidence of approval for the purpose of filing or recording the plat.

(3) A subdivision of land within the regional district that has been annexed by a municipality having planning, zoning, and subdivision authority under

Article 23A of the Code may be admitted to the land records of the county when the plat has been submitted to and approved by the municipality and the approval has been endorsed in writing on the plat by the official of the municipality charged with that responsibility.

(b) *Fees for Commission's subdivision work.* — On the basis of the estimated cost of the services to be rendered by it in connection with the consideration of subdivision plats and the work incidental thereto, the Commission may fix the scale of fees to be paid to it for its subdivision work and from time to time may amend the scale. In the case of each subdivision plat submitted to the Commission, the fee thus fixed shall be paid before the plat is approved or disapproved and carried into the administrative fund of the Commission provided for in § 6-107 of this article.

(c) *Recordation; clerk's fee.* — After the approval and upon receipt of the plat by the clerk of the circuit court, every plat shall be firmly fixed in a well-bound book to be kept by the clerk of the court for the purpose of recording plats and for the recording of which the clerk shall receive the fee he determines to be fair and reasonable.

(d) *Manner of preparing plats.* — Every plat of any subdivision shall be prepared upon paper or cloth of a size and character, with notations, information, and markings the Commission prescribes by regulation. Every approved subdivision of land shall have permanent markers, bound stones, or stations the Commission prescribes which shall be shown and designated on the plat thereof. The Commission and the district council of the county wherein the land lies, shall be furnished with copies of the plat as approved.

(e) *Street dedication.* — The Commission may require dedications of streets and roads in connection with the approval of plats of subdivision for interior subdivision roads, roads abutting the subdivision where it is necessary to create a new road as a part of the plan of subdivision to provide for traffic access to another subdivision road, and widening of existing or public roads abutting the subdivision where widening is necessary in order to provide additional right-of-way adequate to serve additional traffic to be created by the subdivision, but in this case no more dedication may be required than will produce a total right-of-way for a secondary road, as defined by the duly adopted Road Code, or by the appropriate county ordinance or regulation or for a primary road if an existing and duly adopted master plan of highways of the Commission designates the road as a primary or arterial road. In no case whatsoever shall dedication of a width wider than that for a primary road be required, and no more than that necessary for a secondary road unless an existing and duly adopted master plan of the Commission designates the road as a primary or arterial road. However, in Prince George's County, the master plan of highways is to be approved by the district council. In lieu of the above language, in Montgomery County, the Commission may require dedication of streets and roads in connection with the approval of plats of subdivision in accordance with the standards and limitations set forth in the subdivision regulations. The standards shall relate the area of dedication to the total size of the subdivision, the maximum street right-of-way or improvement required for that category of land use as established in the Road Code of the applicable

jurisdiction, and to the increased traffic, lane, and right-of-way requirements which would be created by maximum utilization and development of the subject property in its present zone classification or that higher use shown on any adopted or approved master plan of the applicable jurisdictions. Subject to these standards, the subdivision regulations may require dedication to public use to the full extent of the required right-of-way in each case, except those roads classified in the local subdivision regulations as limited access and controlled highways wherein dedication may be required only for adequate traffic access to those subdivisions to which access is permitted. (1975, ch. 892; 1980, ch. 660; 1983, ch. 57, § 1; ch. 468; 1984, ch. 255; 1985, ch. 417.)

Rejection of preliminary subdivision plan failing to comply with obligatory master plan. — When subdivision regulations require that a proposed subdivision comply with the master plan, an application for approval of a preliminary subdivision plan that fails to so comply must be rejected. *Coffey v. Maryland-National Capital Park & Planning Comm'n*, 293 Md. 24, 441 A.2d 1041 (1982).

Approval of subdivision plats can be legitimately conditioned upon dedication of land for specified public purposes.

Maryland-National Capital Park & Planning Comm'n v. Washington Bus. Park Assocs., 294 Md. 302, 449 A.2d 414 (1982).

Quoted in *County Council v. Curtis Regency Serv. Corp.*, 121 Md. App. 123, 708 A.2d 1058 (1998), cert. denied, 351 Md. 5, 715 A.2d 964 (1998).

Cited in *Washington Sub. San. Comm'n v. TKU Assocs.*, 281 Md. 1, 376 A.2d 505 (1977); *Maryland-National Capital Park & Planning Comm'n v. Chadwick*, 286 Md. 1, 405 A.2d 241 (1979).

§ 7-116. Subdivision regulations generally.

(a) *Authorized; purposes; restrictions.* — In exercising the powers granted to it by § 7-115 of this title, the Commission or the governing body of either county may prepare regulations and amendments governing the subdivision of land within the regional district or the respective portions of the regional district within Montgomery or Prince George's County. The regulations and amendments shall be adopted by the respective governing bodies of the counties, with whatever changes they consider appropriate, and shall be effective from the date of adoption or from such other date the governing body designates provided that such adoption does not affect in any manner the administration of the regulations by the Commission or its functions under § 7-115 of this title. In Montgomery County, on the adoption of any subdivision regulation or amendment by the district council, the regulation or amendment shall be delivered within 3 days to the County Executive who within 10 days thereafter shall approve or disapprove the regulation or amendment. If the County Executive disapproves the regulation or amendment, it shall be returned to the council with the reasons for the disapproval stated in writing. The council, by the affirmative vote of 6 members, may enact the regulation or amendment over the disapproval of the County Executive. Failure of the County Executive to act within 10 days constitutes approval of the regulation or amendment. The regulations may provide for (1) the harmonious development of the district; (2) the coordination of roads within the subdivision with other existing planned or platted roads or with other features of the district or with the Commission's general plan or with any road plan adopted or approved by the Commission as part of the Commission's general plan; (3) adequate open spaces for traffic, recreation, light, and air, by dedication or otherwise, and the

dedication to public use or conveyance of areas designated for dedication under the provisions of the zoning and subdivision regulations and for the payment of a monetary fee, in lieu of dedication, not to exceed 5 percent of the total new market value of the land, as stated on the final assessment notice issued by the State Department of Assessments and Taxation, that is the subject of an approved preliminary plan of subdivision to be used by the Commission to purchase open spaces for the use and benefit of the subdivision in cases where dedication would be impractical, provided that when, in the judgment of the Commission, suitable land is not available for acquisition to serve the subdivision from which a fee has been exacted, or if adequate open space has heretofore been acquired and is available to serve the subdivision, then the Commission may use the fee collected in lieu of dedication to develop or otherwise improve land or recreational facilities that will assist in supplying the overall recreational needs of the subdivision, and further provided that if the subdivision is in a municipality in Prince George's County that is not within the metropolitan district but is within the regional district and when requested by the municipality the mandatory fee in lieu of dedication received by the Commission shall be paid to and used by the municipality either to purchase open space for the use and benefit of the subdivision or to develop or otherwise improve land or recreational facilities that will assist in supplying the overall recreational and open space needs of the subdivision; (4) the reservation of lands for schools and other public buildings and for parks, playgrounds, highways, roads, mass transit facilities, including busways and light rail facilities, and other public purposes, provided no reservation of land for traffic, recreation or any other public purposes as herein provided shall continue for longer than three years without the written approval of all persons holding or otherwise owning any legal or equitable interest in the property; and provided further that the properties reserved for public use shall be exempt from all State, county, and local taxes during the period; (5) the conservation of or production of adequate transportation, water drainage and sanitary facilities; (6) the preservation of the location of and the volume and flow of water in and other characteristics of natural streams and other waterways, including the establishment of a stormwater management program in Montgomery County which would allow the county to accept monetary contributions, the granting of an easement, or the dedication of land; (7) the avoidance of population congestion; (8) the avoidance of scattered or premature subdivision of land as would involve danger or injury to health, safety or welfare by reason of the lack of water supply, drainage, transportation or other public services or necessitate an excessive expenditure of public funds for the supply of services; (9) conformity of resubdivided lots to the character of lots within the existing subdivision with respect to area, frontage, and alignment to existing lots and streets; (10) control of subdivision or building (except for agricultural or recreational purposes) in flood plain areas or streams and drainage courses, and on unsafe land areas; (11) preservation of outstanding natural or cultural features and historic sites or structures; or (12) other benefits to the health, comfort, safety or welfare of the present and future population of the regional district. In Montgomery County, the regulations may

require the provision of adequate recreational facilities or, in lieu of providing recreational facilities, payment of a fee not exceeding the cost of providing adequate recreational facilities to serve the subdivision.

(b) *Provisions; bond.* — The regulations may include provisions as to the extent and manner in which (1) roads shall be graded and improved; (2) curbs, gutters, and sidewalks shall be built; (3) water, sewer, and other utility mains, piping, connections, and other facilities shall be installed; and (4) trees shall be planted or conserved as a condition precedent to the approval of a plat. The regulations or practice of the Commission may provide for the tentative approval of a plat previous to improvements and installations; but tentative approval may not be entered on the plat or entitle the plat to filing or record. In lieu of the completion of the improvements prior to the approval of the plat, the Commission or county may accept a bond with surety to secure the actual construction and installation of the improvements and installations at a time and according to specifications fixed by or in accordance with the regulations. The Commission or county may enforce the bond by all appropriate legal and equitable remedies. The regulations of practice of the Commission may provide for a preapplication procedure and also for subdivision and for tentative or conditional approval or disapproval of the preliminary plans. In Prince George's County, the regulations may provide for the classification of subdivisions as major or minor subdivisions, and may provide for a sketch plan, which in the case of a minor subdivision may be approved by the planning director and filed as the record plat, and in the case of a major subdivision may be required prior to the submission of a preliminary plan of subdivision. In Montgomery County, the regulations also may provide time limits within which action must be taken with regard to preapplication submissions and preliminary plans and they may further provide that if the Commission fails to approve or disapprove the preapplication submissions or preliminary plans within the time limits provided, the preapplication submission or the preliminary plan shall be deemed to have been approved and a certificate to that effect shall be issued by the Commission upon demand. The regulations may provide that the applicant for the Commission's approval may waive this requirement and consent to the extension of the period. The ground of disapproval of the plan shall be stated upon the records of the Commission, and a copy of the record shall be mailed postage prepaid to the last address of record of the applicant.

(c) *Regulatory plan enforcement agreements in Montgomery County.* — (1) In Montgomery County, the planning board of the Commission or its designee may enter into regulatory plan enforcement agreements, declarations, easements, covenants, and other instruments, with appropriate persons or entities regarding any action it is authorized to take under this article. The agreement may establish terms and conditions required to implement the action and provide for enforcement and appropriate remedies. A regulatory enforcement agreement, or instrument, is not a development rights and responsibilities agreement as provided in § 7-121 of this article, unless the parties agree that some or all terms of the regulatory enforcement agreement should be incorporated into a development rights and responsibilities agreement.

(2) The Commission or either county may institute injunction, mandamus, or other appropriate action or proceeding to compel the actual construction and installation of the improvements and conservation of the resources at a time and according to specifications fixed by or in accordance with this article. For this purpose any court of competent jurisdiction has jurisdiction to issue restraining orders and temporary or permanent injunctions or mandamus or other appropriate forms of remedy or relief.

(d) *Hearings.* — Before adoption of the subdivision regulations or any substantial amendment thereof, a public hearing thereon shall be held by the county council, 30 days' notice of the time and place of which shall be given by one publication in one or more newspapers of general circulation in the regional district in that county.

(e) *Plats of land reserved.* — The Commission shall prepare a plat of any land reserved for public use under the provisions of this section, showing the survey location of the land, names and addresses of the owners, and any other information required for filing among the land records of the county in which the land reserved is located and for its proper indexing. The plat shall comply with all requirements for recording of plats among the land records and be recorded by the clerk of the court of the county in which the land is situated.

(f) *Present regulations retained.* — The subdivision regulations heretofore adopted by the Commission and now in effect within the respective portions of the regional district in Montgomery and Prince George's counties are deemed to have been adopted in accordance with the provisions of this section. These regulations apply respectively within the portions of the regional district within each county until modified in accordance with this section.

(g) *Appeals.* — A final action by the Commission on any application for the subdivision of land within 30 days after the action is taken by the Commission, may be appealed by any person aggrieved by the action, or by any person, municipality, corporation or association, whether or not incorporated, which has appeared at the hearing in person, by attorney or in writing to the circuit court for the county which may affirm or reverse the action appealed from, or remand it to the Commission for further consideration. When an appeal is filed the procedures described in § 8-105 (b) of this article shall be applicable to the Commission and other parties as is appropriate.

(h) *Additional remedies in Montgomery County; enforcement.* — (1) (i) In addition to all other remedies provided by law, in Montgomery County, the district council may authorize the planning board to impose civil monetary fines and penalties and, when the public health, safety, or welfare are threatened, issue stop work orders for violations described in item (ii) of this subparagraph.

(ii) This subsection applies to violations of:

1. Titles 7 and 8 of this article;
2. Montgomery County subdivision regulations and zoning ordinances;
3. Any laws or regulations which the Commission or the planning board is exclusively authorized to administer; or
4. Any decision made by the Commission or planning board under its authority.

(2) A fine, not to exceed \$500, may be imposed for each violation. The district council may establish a schedule of fines for each violation and may adopt procedures, consistent with this section, for imposing and collecting those fines. Each day any violation continues shall constitute a separate offense.

(3) The district council may provide that the planning board may enforce the imposition of fines and penalties in a manner consistent with the process requiring certain notification and hearing under Article 66B, § 7.02 of the Code. The imposition of fines and penalties under this subsection may not be subject to an appeal to the Board of Zoning Appeals.

(4) The district council may provide that the planning board, through counsel, may prosecute violations for which civil monetary fines or penalties are imposed.

(5) A violation of a local law implementing the State Forest Conservation Law shall be enforced in accordance with those laws and not in accordance with this subsection. (1975, ch. 892; 1977, ch. 592; 1978, ch. 817; 1979, chs. 65, 592; 1980, chs. 660, 662; 1983, ch. 57, § 1; 1986, ch. 529; 1988, ch. 100; 1989, ch. 5, § 1; 1990, ch. 629; 1991, ch. 370; 1992, ch. 643, § 1; 1993, ch. 5, § 1; 1995, ch. 562; 2000, ch. 61, § 6.)

Cross references. — See Editor's note to § 7-105 of this article.

Editor's note. — Section 2, ch. 562, Acts 1995, provides that "except to the extent affected by a development rights and responsibilities agreement, this Act is not intended to otherwise abrogate Maryland common law."

Rejection of preliminary subdivision plan failing to comply with obligatory master plan. — When subdivision regulations require that a proposed subdivision comply with the master plan, an application for ap-

proval of a preliminary subdivision plan that fails to so comply must be rejected. *Coffey v. Maryland-National Capital Park & Planning Comm'n*, 293 Md. 24, 441 A.2d 1041 (1982).

Quoted in *County Council v. Curtis Regency Serv. Corp.*, 121 Md. App. 123, 708 A.2d 1058 (1998), cert. denied, 351 Md. 5, 715 A.2d 964 (1998).

Cited in *Maryland-National Capital Park & Planning Comm'n v. Chadwick*, 286 Md. 1, 405 A.2d 241 (1979).

§ 7-117. Approval or disapproval of subdivision plats; Prince George's County preliminary subdivision plans.

The Commission shall approve or disapprove a subdivision plat within 30 days after its submission. Otherwise the plat shall be deemed to have been approved, and a certificate to that effect shall be issued by the Commission upon demand. In Prince George's County, each office to which a preliminary subdivision plan is referred shall return one copy of the plan to the planning board within 30 days with comments noted on it. If the reply is not made within 30 days by any office to whom referred, the plan shall be deemed to be approved by it. In Prince George's County, the Commission shall approve or disapprove a preliminary subdivision plan within 70 days after its submission, excluding the month of August and the period between December 20 and January 3 when calculating this 70-day period. Otherwise, the preliminary subdivision plan shall be deemed to have been approved, and a certificate to that effect shall be issued by the Commission upon demand. The applicant for the Commission's approval may waive either or both of these requirements and consent to the extension of the periods. However, in Prince George's County, no

such waiver may be for a period greater than the original period allowed for approval of the plat or preliminary plan. The ground of disapproval of any plat shall be stated upon the records of the Commission. Any plat submitted to the Commission shall contain the name and address of a person to whom notice of hearing may be sent. No plat may be sent by mail to the address not less than five days before the date fixed therefor. In his application, however, the applicant may waive the hearing and notice, and the approval of any plat exactly as submitted by the applicant is a waiver of the hearing and notice. The subdivision regulations may include provisions for notice to owners of properties that would be substantially affected by approval of any subdivision plat and for public hearings on the applications and may include provisions for an appeal to the district council from a decision approving or disapproving a subdivision plat. (1975, ch. 892; 1983, ch. 57, § 1; 1990, ch. 368.)

Administrative appeals. — County Council's immediate administrative appeal was not authorized from the Planning Board's action on preliminary plans of subdivision. *County Council v. Dutcher*, 365 Md. 399, 780 A.2d 1137 (2001).

District Council authority. — This section does not give the District Council authority to make a final decision with regard to subdivision plat approval, only the authority to review a final decision from the Planning Board. Deference should be given to the Planning Board's decision, except as to matters of law. *County Council v. Curtis Regency Serv. Corp.*, 121 Md.

App. 123, 708 A.2d 1058 (1998), cert. denied, 351 Md. 5, 715 A.2d 964 (1998).

Appropriate remedy where District Council applies incorrect standard. — Where the District Council applied the wrong standard of review to a decision of the Planning Board regarding the approval of a subdivision plat, the appropriate remedy should have been to remand the case to the District Council so that it could decide the appeal after applying the correct standard of review. *County Council v. Curtis Regency Serv. Corp.*, 121 Md. App. 123, 708 A.2d 1058 (1998), cert. denied, 351 Md. 5, 715 A.2d 964 (1998).

§ 7-117.1. Referral of subdivision plans.

(a) *Montgomery County.* — (1) In Montgomery County, the subdivision regulations shall provide that prior to action by the planning board a preliminary plan of a subdivision shall be referred to the County Executive for a recommendation as to whether public facilities are adequate to support and service the area of the proposed subdivision.

(2) Based on criteria developed by the County Executive and approved by the district council and standards set forth in the subdivision regulations of Montgomery County, the County Executive shall recommend either an approval or disapproval of the preliminary plan and return it to the Commission.

(b) *Applicability of section.* — This section applies only to the plans of a subdivision that have not received preliminary plans of subdivision approval by the planning board before December 1, 1986. (1986, ch. 528.)

§ 7-117.2. Review of preliminary plan of subdivision or resubdivision by incorporated municipality in Montgomery County.

(a) *Submission for review.* — (1) (i) In Montgomery County, the subdivision regulations and zoning ordinance shall provide that, before any action is taken by the planning board on an application for a preliminary plan of subdivision or resubdivision, project plan, or site plan review for property described in

subparagraph (ii) of this paragraph, a copy of the application shall be referred promptly to the incorporated municipality for review and comment.

(ii) This subsection applies to property that:

1. Is located within the boundaries of an incorporated municipality as defined in § 8-104 (c) of this article; or

2. Shares a common boundary line, or a portion of a common boundary line, with property lying entirely within the boundaries of an incorporated municipality.

(2) If the incorporated municipality elects to comment, the incorporated municipality shall promptly forward its written comments to the planning board.

(b) *Recommendations.* — (1) In Montgomery County, on referral of a preliminary plan proposing the resubdivision of residentially zoned property lying within the boundaries of an incorporated municipality, the incorporated municipality shall initially determine whether to transmit a recommendation concerning the plan to the planning board.

(2) If the initial determination is to transmit a recommendation, the incorporated municipality, after providing reasonable public notice, shall hold a hearing before it transmits its recommendation to the planning board.

(3) The recommendation shall be in writing and shall include all pertinent findings of fact and conclusions of law supporting the recommendation, based on the record of the hearing.

(4) An incorporated municipality may recommend denial of a plan under this subsection only if it determines that the plan fails to comply with particular provisions of the subdivision regulations.

(5) If an incorporated municipality recommends denial of a plan, it shall also transmit a written record of the hearing to the planning board for inclusion in the record compiled by the planning board.

(6) An incorporated municipality shall be considered to have waived its right to make a recommendation under this subsection unless it transmits its written recommendation and complete record, if required, to the planning board within 45 days of the delivery of the plan and application by the planning board.

(7) When an incorporated municipality recommends denial of a residential resubdivision application, a two-thirds majority vote of the members of the planning board then present and participating is required to override the recommendation of the incorporated municipality. (1992, ch. 643, § 1.)

Cross references. — See Editor's note to § 7-105 of this article.

§ 7-118. Conveyance of property before plat approved.

If the owner or agent of the owner of any land located within a subdivision, transfers or sells any land by reference to or exhibition of or by other use of a plat of a subdivision, before the plat has been approved by the Commission and recorded or filed in the office of the clerk of the circuit court of the county in which the property is located, he shall forfeit and pay to the district council a

penalty of \$100 for each lot or parcel so transferred or sold. The description of the lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring does not exempt the transaction from these penalties or from the remedies herein provided. The district council may enjoin the transfer or sale or agreement by action for injunction brought in any court of equity jurisdiction or may recover the penalty by a civil action in any court of competent jurisdiction. (1975, ch. 892; 1976, ch. 857, § 2; 1983, ch. 57, § 1.)

§ 7-119. Recordation of unapproved plats.

No clerk of the Circuit Court of Montgomery or Prince George's County may receive for filing or recording or record any plat of a subdivision of land within the regional district unless the plat has endorsed thereon in writing the approval of the Commission. If a plat not so approved is recorded after May 24, 1939, the plat is invalid, and the Commission may institute proceedings against the clerk to compel the plat to be stricken from the land records of the county. For this purpose any court of competent jurisdiction has jurisdiction to issue appropriate orders. (1975, ch. 892; 1983, ch. 57, § 1.)

§ 7-120. Standards and requirements to control subdivision and development in areas with inadequate public facilities in Montgomery and Prince George's counties.

(a) *In general.* — In addition to any other authority granted by this article, the County Council of Montgomery County and the County Council of Prince George's County, by legislation, may impose in their respective county standards and requirements for the purpose of avoiding the scattered or premature subdivision or development of land because of the inadequacy of transportation, water, sewerage, drainage, school, or other public facilities.

(b) *Schools in Prince George's County.* — In Prince George's County:

(1) Notwithstanding the provisions of subsection (a) of this section, the County Council of Prince George's County shall impose adequate public facilities standards and requirements under subsection (a) of this section with respect to schools; and

(2) This subsection does not apply to any property located in an infrastructure finance district approved before January 1, 2000. (1986, ch. 772; 2000, ch. 456, § 2.)

§ 7-121. Execution of development rights and responsibilities agreements in Montgomery County.

(a) *Definitions.* — In this section, the following words have the meanings indicated.

(1) "Development" means any activity, other than normal agricultural activity, which materially affects the existing condition or use of any land or structure.

(2) "Development rights and responsibilities agreement" or "agreement" means an agreement, approved by the district council or the county executive, as appropriate, made between a planning board of the Commission, or its designee, a reviewing entity, and a person having a legal or equitable interest in real property for the purpose of establishing conditions under which development of the property may proceed for a specified time.

(3) "Regulatory plan" means an application proposing development on privately owned land that must be submitted to a planning board of the Commission for review and final approval under this article or under county laws and regulations.

(4) "Reviewing entity" means the county executive, unless otherwise indicated, or other local, State, or federal government or unit that agrees to execute an agreement.

(b) *Applicability.* — This section only applies to Montgomery County.

(c) *Ordinances.* — (1) The district council may adopt ordinances, consistent with this section, that establish procedures and requirements for the execution of development rights and responsibilities agreements.

(2) An ordinance may specify the circumstances under which a person may request the negotiation and execution of an agreement based upon:

- (i) The size, use, zoning, or staging plan of the proposed development; or
- (ii) Other relevant factors, including the provision of public benefits or amenities or growth management policies adopted by the county.

(3) An ordinance adopted under this section by a district council, shall authorize the planning board of the Commission to:

(i) If approved by the district council or county executive, as appropriate, execute agreements affecting real property within the boundaries of the planning board's jurisdiction with a person having a legal or equitable interest in the real property; and

(ii) If requested by any party, include a reviewing entity as an additional party to the agreement.

(4) Nothing in this section may be construed to require the adoption of an ordinance by the district council or to authorize the district council, the Commission, or its designee to require a party to enter into an agreement.

(d) *Planning board.* — (1) Before entering into an agreement, a person having a legal or equitable interest in real property or the representative of a person having a legal or equitable interest in real property, shall request that a planning board of the Commission in the jurisdiction in which the property is located consider negotiating and executing an agreement. A request must be made as part of an application submitted to a planning board for a regulatory plan review on matters authorized by this article.

(2) A planning board may, but need not, agree to negotiate and, after public hearing, enter into an agreement.

(e) *Public hearing.* — A public hearing for a regulatory plan review may satisfy the requirement for a public hearing for an agreement.

(f) *Proposed agreement to be consistent with Commission's general plan.* — A planning board may not enter into an agreement unless the board makes an affirmative determination that the proposed agreement is consistent with the Commission's general plan.

- (g) *Terms of agreement.* — (1) An agreement shall include:
- (i) A legal description of the real property subject to the agreement;
 - (ii) The names of all persons having a legal or equitable interest in the real property subject to the agreement;
 - (iii) The duration of the agreement;
 - (iv) The permissible uses of the real property;
 - (v) The density or intensity of use;
 - (vi) The maximum height and size of structures;
 - (vii) The general location of all buildings, structures and supporting facilities and features;
 - (viii) A description of all anticipated permits required or already approved for the development of the real property;
 - (ix) A statement that the proposed development is consistent with the Commission's general plan and all applicable development laws and regulations administered by the planning board;
 - (x) A description of the conditions, terms, restrictions, or other requirements determined by a planning board to be necessary to ensure the public health, safety, and welfare of its citizens; and
 - (xi) To the extent applicable, provisions for the:
 - 1. Dedication of a portion of the real property for immediate or future public use;
 - 2. Protection of sensitive areas;
 - 3. Preservation and restoration of historic structures; and
 - 4. Construction or financing of public facilities.
- (2) An agreement may:
- (i) Establish the terms by which and a period of time during which an approved development, or individual phases, must commence and be completed;
 - (ii) Incorporate those terms and conditions that would be included in other enforceable agreements and instruments between the parties required as part of its regulatory plan review; and
 - (iii) Provide for other matters consistent with this article.
- (h) *Duration of agreement.* — Unless otherwise provided under subsection (g) (1) (iii) of this section or extended by amendment under subsection (j) (1) of this section, an agreement shall be void 5 years after the date on which the parties execute the agreement. Any extension must be approved by the district council or county executive, as appropriate.
- (i) *Effect of agreement.* — During the established term of the agreement:
- (1) Development may occur in accordance with applicable laws, rules, and regulations, governing the use, density, or intensity of the real property, adopted by the district council and administered by the planning board or county and, if applicable, those adopted, enacted, or promulgated by a reviewing entity and in effect when the project was reviewed and approved by the board and reviewing entity; and
 - (2) The project may be constructed without effect by and regard to modifications that may subsequently occur to such applicable laws, rules, and regulations, except as provided in subsection (k) of this section.

(j) *Amendment of agreement.* — (1) After a public hearing, the parties to an agreement may amend the agreement by mutual consent, provided that any substantial modification must be approved by the district council or county executive, as appropriate.

(2) A planning board may not amend an agreement, unless it makes a determination that the proposed amendment to the agreement is consistent with the Commission's general plan.

(k) *Termination of agreement.* — (1) The parties to an agreement may terminate the agreement by mutual consent.

(2) After a public hearing, the planning board with the approval of the district council or county executive, as appropriate, may suspend or terminate an agreement if it determines that suspension or termination is essential to ensure the public health, safety, or welfare.

(l) *Exception to subsection (i).* — An agreement may not prevent a planning board, district council, county executive, or other local, State, or federal government from requiring a person to comply with the laws, rules, regulations, and policies, adopted, enacted, or promulgated after the date of the agreement, if either the district council or county executive, as appropriate, determines that imposition and compliance with these laws and regulations is essential to ensure the public health, safety, or welfare of residents of all or part of the jurisdiction.

(m) *Recording agreement.* — (1) An agreement shall be void if not recorded in the land records office of the jurisdiction within 20 days after the date on which the parties execute the agreement.

(2) When an agreement is recorded, the parties to the agreement and their successors in interest are bound to the agreement.

(n) *Remedies.* — Unless terminated under subsection (k) of this section, an agreement may be enforced by the parties to the agreement or their successors in interest, utilizing all remedies available by law. No right to an administrative appeal arises from the negotiation or enforcement of an agreement. (1995, ch. 562; 1999, ch. 34, § 1.)

Effect of amendments. — Chapter 34, Acts 1999, approved Apr. 13, 1999, and effective from date of enactment, substituted "county laws" for "Montgomery County or Prince George's County laws" in (a) (3), and substituted "county executive" for "County Executive of Montgomery County or Prince George's County" in (a) (4).

§ 7-121.1. Development rights and responsibilities agreements in Prince George's County.

(a) *Definitions.* — In this section the following words have the meanings indicated.

(1) "Developer" means a person having a legal or equitable interest in real property located in Prince George's County.

(2) "Development" means any activity, other than normal agricultural activity, which materially affects the existing condition or use of any land or structure.

(3) "Development rights and responsibilities agreement" or "agreement" means an agreement, negotiated and executed by the county executive or the

Art. 28, § 7-121.1 ANNOTATED CODE OF MARYLAND

county executive's designee, with the approval of the district council, for the purpose of establishing conditions for advancing school capacity.

(b) *Application.* — This section applies only in Prince George's County.

(c) *Execution of agreement.* — A developer or developer's representative may petition the county executive requesting that an agreement be executed.

(d) *Powers of county executive.* — The county executive may:

(1) Negotiate development rights and responsibilities agreements for real property located in the county with a developer;

(2) Include a federal, State, or local government or unit as an additional party to the agreement; and

(3) Execute an agreement only after its approval by the district council.

(e) *Powers of district council.* — The district council:

(1) May:

(i) Establish procedures and requirements for the consideration and execution of development rights and responsibilities agreements, including provisions for negotiation and approval in accordance with this section; and

(ii) Approve development rights and responsibilities agreements negotiated by the county executive; and

(2) Shall require a public hearing before approving a development rights and responsibilities agreement.

(f) *Effectiveness of agreement.* — An agreement executed by the county executive takes effect without any further action by the district council.

(g) *Agreement must be consistent with general plan.* — The county executive may not enter into an agreement unless a planning board of the Commission determines that the proposed agreement is consistent with the Commission's general plan.

(h) *Requirements.* — (1) An agreement shall include:

(i) A description of the real property subject to the agreement;

(ii) The parties involved;

(iii) The specific purposes of the agreement;

(iv) The duration of the agreement;

(v) A physical description and location of the buildings, structures, and supporting facilities and features on the real property;

(vi) A description of all anticipated permits required or already approved for the development of the real property;

(vii) Provisions for the construction or financing of adequate public facilities for schools;

(viii) A statement that the proposed development is consistent with the Commission's general plan and all applicable development laws and regulations; and

(ix) A description of the conditions, terms, restrictions, or other requirements determined by a planning board to be necessary to ensure the public health, safety, and welfare of its citizens.

(2) An agreement may:

(i) Establish the terms by which and a period of time during which an approved development, or individual phases, must commence and be completed; and

(ii) Provide for other matters consistent with this article.

(i) *Duration.* — Unless otherwise provided within the agreement or extended by amendment under subsection (k) of this section, an agreement shall contain a definite period of duration that is determined by the parties, not exceeding 15 years. Any extension must be approved by the district council.

(j) *Rules governing agreement.* — The laws, rules, regulations, and policies in force at the time the parties execute the agreement shall govern the use, density, or intensity of the real property subject to the agreement unless the district council or State or federal government determines that compliance with laws, rules, regulations, and policies enacted or adopted after the parties executed the agreement is essential to ensure the health, safety, or welfare of the residents of all or part of the jurisdiction.

(k) *Amendment.* — The parties to an agreement may amend the agreement by mutual consent if the district council:

(1) Approves any substantial modification; and

(2) Determines that the proposed amendment to the agreement is consistent with the Commission's general plan.

(l) *Termination.* — (1) The parties to an agreement may terminate the agreement by mutual consent.

(2) The county executive may suspend or terminate an agreement if the county executive determines that the suspension or termination is essential to ensure the public health, safety, or welfare.

(m) *Voidance.* — (1) An agreement shall be void if not recorded in the land records office of Prince George's County within 30 days after the date on which the parties execute the agreement.

(2) When an agreement is recorded, the parties to the agreement and their successors in interest are bound to the agreement.

(n) *Enforcement; appeal.* — Unless terminated under subsection (l) of this section, an agreement may be enforced by the parties to the agreement or their successors in interest, utilizing all remedies available at law or in equity. No right to an administrative appeal arises from the negotiation or enforcement of an agreement. (2002, ch. 389.)

Editor's note. — Section 2, ch. 389, Acts 2002, provides that "this Act is self-executing and shall take effect without any action required by the District Council for Prince George's County."

Section 3, ch. 389, Acts 2002, provides that the act shall take effect Oct. 1, 2002.

TITLE 8.

DISTRICT COUNCILS FOR REGIONAL DISTRICT.

§ 8-101. Powers generally.

(a) *Designation of district councils; bi-county district council.* — The County Councils of Montgomery County and Prince George's County are each individually designated, for the purposes of this article, as the district council for that portion of the regional district lying within each county, respectively. Sitting together, they are jointly designated, for the special purposes delineated in this

article, as the bi-county district council for the entire Maryland-Washington Regional District. The adoption of an ordinance or resolution by the bi-county district council shall be accomplished only by the affirmative votes of a majority of the total membership of each district council.

(b) *Grant of zoning power.* — (1) In this subsection, the term "zoning classification of agricultural open space" means a zoning classification in which uses are limited to those permissible in the agricultural open space portion of an agricultural preservation development under § 27-445.01 of the Prince George's County Code (1991 Edition, as amended).

(2) Except as otherwise provided in §§ 8-126 and 8-127 of this subtitle, each district council, respectively, in accordance with the conditions and procedures specified in this article, may by ordinance adopt and amend the text of the zoning ordinance and may by resolution or ordinance adopt and amend the map or maps accompanying the zoning ordinance text to regulate, in the portion of the regional district lying within its county, (i) the location, height, bulk, and size of buildings, other structures, and units therein, building lines, minimum frontages, depths and areas of lots, and percentages of lots which may be occupied; (ii) the size of lots, yards, courts, and other open spaces; (iii) the erection of temporary stands and structures; (iv) the density and distribution of population; (v) the location and uses of buildings and structures and units therein for trade, industry, residence, recreation, agriculture, public activities, and other purposes; and (vi) the uses of land, including surface, subsurface, and air rights therein, for building, trade, industry, residence, recreation, agriculture, forestry, or other purposes.

(3) The powers granted by this subsection include the power to establish a program for the transfer of development rights.

(4) No regulation may prohibit the use of any land by the owner of such land or the holder of any easement or right therein or the owner's or holder's tenant for farming, other agricultural uses exclusively, or within Prince George's County, for the purposes of storing natural or artificial gas at a level below 500 feet from the surface of the earth.

(5) The County Council for Montgomery County, sitting as a district council, may not receive an application for a zoning map amendment upon the same land which has been the subject of a previous zoning application for map amendment filed after June 1, 1965, for the same zoning classification upon which there was a decision on the merits unless 36 months have expired since the filing of the application for the previous zoning map amendment upon which there was a decision on the merits. Further, an application for a zoning map amendment filed with the County Council for Montgomery County, sitting as a district council, shall set forth the names of all persons having a substantial interest in the subject property of the application, such substantial interest to include all those persons with a share in such property amounting to five percent or more whether held in an individual or corporate capacity of the full cash value of such property exclusive of all mortgages, deeds of trust, liens and encumbrances. It shall also set forth the names of all contract purchasers and all those persons holding a mortgage, a deed of trust, or an option to purchase the property. However, the foregoing time limitation and

name requirement do not apply to applications filed by the district council or by the Commission.

(c) *Power to regulate for the protection of historical, archeological, etc., sites, structures or districts.* — In order to protect the historical, archeological, architectural or cultural heritage of areas in Montgomery and Prince George's Counties comprising the regional district and to preserve and enhance the quality of life in the community, in addition to any power or authority of the district councils to regulate by ordinance, planning, zoning or subdivision, each district council may provide by ordinance regulations for the protection, preservation and enhancement of sites, structures with their appurtenances and environmental settings, or districts of historical, archeological, architectural or cultural value designated on the adopted and approved general plan. The enactment and application of these regulations shall be reasonable and appropriate to the purpose of this section and are limited to the protection, preservation and enhancement of the exterior of the sites, structures or districts, and, if such action constitutes a taking of private property, provision shall be made for just compensation. (1975, ch. 892; 1977, ch. 285; 1983, ch. 57, § 1; 1986, ch. 605; 1992, ch. 643, § 1; 1993, ch. 478; 1994, ch. 3, § 1; ch. 4, § 1; ch. 361.)

Editor's note. — Section 3, ch. 643, Acts 1992, provides that "§ 1 of this Act may not be construed to alter any planning, zoning, or subdivision powers which an incorporated municipality is authorized to exercise within its boundaries as of the effective date of this Act."

Section 4, ch. 643, Acts 1992, provides that "this Act does not preclude any independent expenditure by any person, including any applicant, agent, or political action committee."

Section 5, ch. 643, Acts 1992, provides that "this Act may not be construed to prohibit an applicant or agent from making a contribution to any person other than a member of the Prince George's County Council or the County Executive of Prince George's County, unless it is the intent of the applicant or agent to contribute indirectly to the member of the County Council or the County Executive."

Section 6, ch. 643, Acts 1992, provides that "this Act:

(1) Supersedes any Prince George's County ordinance dealing with subjects covered by this Act; and

(2) May not be supplemented by any Prince George's County ordinance."

University of Baltimore Law Review. — For article, "Maryland's Growing Pains: The Need for State Regulation," see 16 U. Balt. L. Rev. 201 (1987).

Constitutionality of housing ordinance. — Because no fundamental right or suspect class had been infringed upon by a "minidorm" ordinance's classification of housing on the basis of the occupation of the tenants, and because petitioners did not argue otherwise, the

reviewing court applied the rational basis standard. To withstand such equal protection scrutiny, the zoning ordinance in question must be rationally related to a legitimate governmental purpose. *Kirsch v. Prince George's County*, 331 Md. 89, 626 A.2d 372 (1993), cert. denied, 510 U.S. 1011, 114 S. Ct. 600, 126 L. Ed. 2d 565 (1993).

County, in adopting "minidorm" ordinance restricting residency in minidormitories to students, did not advance its objective of clearing residential neighborhoods of noise, litter, and parking congestion pursuant to the command of the equal protection clause of the Fourteenth Amendment and article 24 of the Declaration of Rights. *Kirsch v. Prince George's County*, 331 Md. 89, 626 A.2d 372 (1993), cert. denied, 510 U.S. 1011, 114 S. Ct. 600, 126 L. Ed. 2d 565 (1993).

Protection and promotion of health and welfare. — Paragraph (b) (1) (now (b) (2)) of this section requires, at least implicitly, that the County Council carry out its delegated zoning powers for the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the county. *Levinson v. Montgomery County*, 95 Md. App. 307, 620 A.2d 961, cert. denied, 331 Md. 197, 627 A.2d 539 (1993).

Mechanisms for land use planning. — The Regional District Act establishes two mechanisms for land use planning: the first mechanism is through zoning and the second mechanism is the mandatory referral process. *Pan Am. Health Org. v. Montgomery County*, 338 Md. 214, 657 A.2d 1163 (1995).

Zoning authority in Montgomery County. — The Regional District Act is now the exclusive source of zoning authority in Montgomery County, and any enactment concerning zoning in the County, which is at variance with the Regional District Act, is inoperative within the district; thus, the Express Powers Act, Article 25A, § 5 (X), authorizing chartered counties to enact laws relating to zoning and planning, has no application in Montgomery County. Council of Chevy Chase View v. Rothman, 323 Md. 674, 594 A.2d 1131 (1991).

Zoning enactments by Montgomery County council were not legislation for constitutional purposes. — As the zoning enactments of the district council in Montgomery County are no longer subject to the approval or veto of the county executive, they do not constitute legislation within the meaning of Article XI-A of the Maryland Constitution. Montgomery County v. Revere Nat'l Corp., 341 Md. 366, 671 A.2d 1 (1996).

Authorization to enact zoning ordinances or establish setback restrictions. — The express power vested in a special tax district to enforce "building . . . and other regulations", including regulations with respect to the "erection of buildings" and "other police or health regulations", did not authorize it "to enact zoning ordinances or to establish setback restrictions". Council of Chevy Chase View v. Rothman, 323 Md. 674, 594 A.2d 1131 (1991).

Legislative policy precludes antitrust liability of county for enacting zoning ordinance. — Provisions of the Regional District Act constitute a clearly articulated and affirmatively expressed State policy to displace free competition among landowners and users of land with local regulation by zoning and planning, so that Prince George's County is immune from antitrust liability for enacting zoning ordinance and denying special exception. Racetrac Petro., Inc. v. Prince George's County, 601 F. Supp. 892 (D. Md. 1985), aff'd, 786 F.2d 202 (4th Cir. 1986).

Executing policy of zoning ordinance is administrative function that may be properly delegated to administrative boards or officials under specified procedural guidelines. Montgomery County v. Woodward & Lothrop, Inc., 280 Md. 686, 376 A.2d 483 (1977), cert. denied, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

Zoning changes must be made by zoning amendment procedures. — The county is precluded from zoning in any manner other than that specifically authorized — namely, by the zoning map and zoning text amendment procedures. By using the process of amending a master plan to effect a significant increase in the permissible density of development of residential zones, the district council has run afoul

of the State mandate that zoning changes be made by zoning procedures. West Montgomery County Citizens Ass'n v. Maryland-National Capital Park & Planning Comm'n, 309 Md. 183, 522 A.2d 1328 (1987).

Distinction between "zoning" and "planning." — See JMC Constr. Corp. v. Montgomery County, 54 Md. App. 1, 456 A.2d 931 (1983).

Zoning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community, not only with respect to the uses of lands and buildings, but also with respect to streets, parks, civic beauty, industrial and commercial undertakings, residential developments, and such other matters affecting the public convenience and welfare as may be properly embraced within the police power. West Montgomery County Citizens Ass'n v. Maryland-National Capital Park & Planning Comm'n, 309 Md. 183, 522 A.2d 1328 (1987).

Zoning legislation affecting international organization. — Despite early assurances from county and regional officials that the Pan American Health Organization would be treated as "public" for purposes of the then applicable zoning laws, the organization is not, under Maryland law or the United States Constitution, a public agency beyond the reach of the local zoning authority. Pan Am. Health Org. v. Montgomery County, 889 F. Supp. 234 (D. Md. 1994), aff'd, 59 F.3d 167 (4th Cir. 1995).

Delegation of power to planning board not illegal. — There was no illegal delegation of power to the planning board when the Montgomery County Council enacted commercial business district zones with predetermined maximum allowable densities and delegated to the planning board the administrative function of determining, pursuant to carefully drawn procedural guidelines, including site plan review, the actual appropriate density for a specific property up to legislatively specified maximum densities. Montgomery County v. Woodward & Lothrop, Inc., 280 Md. 686, 376 A.2d 483 (1977), cert. denied, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

County historic preservation commission did not have jurisdiction over capital projects proposed by county college. — The Maryland Historical Trust, rather than the Montgomery County Historic Preservation Commission, had jurisdiction over two capital projects proposed to be constructed by Montgomery College on state land adjacent to its campus as the projects involved the use of state bond proceeds and were exempt from local historic preservation regulation. 87 Op. Att'y Gen. — (February 27, 2002).

Utilization of optional method of development within commercial business development zones was within the zoning powers of the County Council, and did not

zoning changes be
s. West Montgomery
Maryland-National
Comm'n, 309 Md.

zoning" and "plan-
Corp. v. Montgom-
456 A.2d 931 (1983).
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Park & Planning
2 A.2d 1328 (1987).

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county college. —
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al method of devel-
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uncil, and did not

constitute any form of invalid conditional zon-
ing proscribed by case law or the zoning ordi-
nance. *Montgomery County v. Woodward &
Lothrop, Inc.*, 280 Md. 686, 376 A.2d 483 (1977),
cert. denied, 434 U.S. 1067, 98 S. Ct. 1245, 55 L.
Ed. 2d 769 (1978).

Consideration of historical importance.

— The historical importance of an area is a
legitimate consideration in the zoning process.
*Coscan Wash., Inc. v. Maryland-Nat'l Capital
Park & Planning Comm'n*, 87 Md. App. 602,
590 A.2d 1080, cert. denied, 324 Md. 324, 597
A.2d 421 (1991).

An important consideration in evaluating
building design is the historical importance of
not only the land on which the structures will
be built, but the adjacent land as well. *Coscan
Wash., Inc. v. Maryland-Nat'l Capital Park &
Planning Comm'n*, 87 Md. App. 602, 590 A.2d
1080, cert. denied, 324 Md. 324, 597 A.2d 421
(1991).

§ 8-102. Districts and zones.

For the purposes of such exercise of power, each district council may divide
the portion of the regional district lying within its county into districts and
zones of whatever number, shape or area it may determine. Within the
districts and zones the district council may regulate the erection, construction,
reconstruction, alteration, and uses of buildings and structures and the uses of
land, including surface, subsurface, and air rights therein. Both districts and
zones may be created; all regulations shall be uniform for each class or kind of
building throughout any district or zone, but the regulations in one district or
zone may differ from those in another district or zone. (1975, ch. 892; 1983, ch.
57, § 1.)

University of Baltimore Law Review. —
For article, "Maryland's Growing Pains: The
Need for State Regulation," see 16 U. Balt. L.
Rev. 201 (1987).

Derivation of uniformity provision. —
The uniformity provision contained in this sec-
tion was derived from § 2 of the Standard State
Zoning Enabling Act, the purpose of which was
mainly a political rather than a legal one, i.e.,
to give notice to property owners that there
shall be no improper discriminations. *Mont-
gomery County v. Woodward & Lothrop, Inc.*,
280 Md. 686, 376 A.2d 483 (1977), cert. denied,
434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769
(1978).

Invidious distinctions and discrimina-
tions in applying uniformity requirement
are impermissible. *Montgomery County v.*
Woodward & Lothrop, Inc., 280 Md. 686, 376
A.2d 483 (1977), cert. denied, 434 U.S. 1067, 98
S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

Legislative policy precludes antitrust li-
ability of county for enacting zoning ordi-
nance. — Provisions of the Regional District

Stated in County Council v. Curtis Regency
Serv. Corp., 121 Md. App. 123, 708 A.2d 1058
(1998), cert. denied, 351 Md. 5, 715 A.2d 964
(1998).

Cited in Ligon v. Maryland, 448 F. Supp. 935
(D. Md. 1977); *County Council v. Carl M. Free-*
man Assocs., 281 Md. 70, 376 A.2d 860 (1977);
Harbor Island Marina, Inc. v. Board of County
Comm'rs, 286 Md. 303, 407 A.2d 738 (1979);
Boyd's Civic Ass'n v. Montgomery County Coun-
cil, 67 Md. App. 131, 506 A.2d 675 (1986); *Boyd's*
Civic Ass'n v. Montgomery County Council, 309
Md. 683, 526 A.2d 598 (1987); *Landover Books,*
Inc. v. Prince George's County, 81 Md. App. 54,
566 A.2d 792 (1989); *Montgomery County v.*
Singer, 321 Md. 503, 583 A.2d 704 (1991);
County Council v. Brandywine Enters., Inc.,
350 Md. 339, 711 A.2d 1346 (1998).

Act constitute a clearly articulated and affirma-
tively expressed State policy to displace free
competition among landowners and users of
land with local regulation by zoning and plan-
ning, so that Prince George's County is immune
from antitrust liability for enacting zoning or-
dinance and denying special exception. *Racetrac Petro., Inc. v. Prince George's County*,
601 F. Supp. 892 (D. Md. 1985), aff'd, 786 F.2d
202 (4th Cir. 1986).

Classification within district not prohib-
ited. — The uniformity requirement does not
prohibit classification within a district, so long
as it is reasonable and based upon the public
policy to be served. *Montgomery County v.*
Woodward & Lothrop, Inc., 280 Md. 686, 376
A.2d 483 (1977), cert. denied, 434 U.S. 1067, 98
S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

No lack of uniformity. — Where all prop-
erty uses which do not rely on county operated
parking facilities have their gross floor area
calculated in the same manner, while all prop-
erty uses located within parking lot districts
which do not rely on county operated facilities

have their gross floor area calculated in the same manner, there is no lack of uniformity. *Montgomery County v. Woodward & Lothrop*,

Inc., 280 Md. 686, 376 A.2d 483 (1977), cert. denied, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

§ 8-102.1. Authority of County Executive to approve or disapprove changes to zoning ordinance.

Repealed by Acts 1992, ch. 643, § 1, effective October 1, 1992.

Cross references. — See Editor's note to § 8-101 of this article.

§ 8-103. Effect of zoning regulations.

Any regulation imposing a lower height limitation, less percentage of lot occupancy, wider or larger courts, deeper yards, or other more strict limitations than those provided by State, county, municipal, or other local regulations, shall prevail within the area for which it is imposed over the limitations provided by State, county, municipal, or other local regulations. (1975, ch. 892; 1983, ch. 57, § 1.)

§ 8-104. Amendments to zoning regulations — Generally.

(a) *Authorized procedure.* — (1) After duly advertised public hearing each district council from time to time may amend its regulations or any regulation, including the maps or any map, in accordance with procedures established in the respective zoning ordinances. The procedures and ordinances may include, but not be limited to: (i) procedures limiting the times during which amendments may be adopted; (ii) provisions for hearings and preliminary determinations by an examiner, board or other agency; (iii) procedures for quorums, number of votes required to enact amendments and variations or increases therein based upon such factors as master plans, recommendations of the hearing examiner, planning board, municipality, or other body, and petitions of abutting property owners, and the evidentiary value which may be accorded to any or all of these; and (iv) procedures for hearing, notice, costs, and fees, amendment of applications, stenographic records, reverter, lapse, and reconsideration de novo of undeveloped zoning amendments. The existing provisions of the *Regional District Law* and of the ordinances enacted by the respective district councils relating to the foregoing matters shall remain in full force and effect unless or until specifically superseded or amended in accordance with the power and authority granted herein, but no such amendment may be made by a district council, in a year in which the council is elected, after the 31st day of October and until the newly elected council is duly qualified and has taken office.

(2) In Montgomery County all applications which seek a zoning classification, either euclidean or floating, other than that which is indicated to be appropriate or suitable in the text or on the land use map of an adopted master plan, approved by the district council, under the provisions of § 7-108 (e) of this article, shall be granted only by the affirmative vote of 6 members of the district council. If the application for reclassification is recommended for

approval by the Commission or if the application is for a zoning classification created after the approval of the master plan by the council, then an affirmative vote of 5 members of the district council is required to grant the application or applications. In all other cases, an application may not be granted except by affirmative vote of at least 5 members of the district council.

(3) In Prince George's County the district council shall require:

(i) A two-thirds vote of all members of the district council to approve a zoning map amendment if the zoning map amendment is contrary to an approved master plan;

(ii) A two-thirds vote of all members of the district council to approve a zoning map amendment or a special exception if the zoning map amendment or special exception is contrary to the recommendation of a municipal corporation that has any portion of the land subject to the zoning map amendment or special exception within the municipal boundaries; and

(iii) A two-thirds vote of all members of the district council and a four-fifths vote of all members of the planning board to approve an optional parking plan if the optional parking plan is contrary to the recommendation of a municipal corporation that has any portion of the land subject to the optional parking plan within the municipal boundaries.

(b) *Referral to planning boards and municipalities.* — Before any map amendment is passed it shall be submitted to the appropriate planning board and to the governing body of the incorporated municipality in which the land is located, for approval, disapproval, or suggestions.

Each district council may provide by ordinance procedures to be followed by the planning boards and municipalities in considering zoning map amendments to the extent that these provisions are not in conflict with the provisions of this article.

(c) *Referral to incorporated municipalities.* — Before the district council of the Maryland-Washington Regional District in Montgomery County and Prince George's County may amend the zoning ordinance of either county by changing the zoning classification of property within any incorporated municipality, the application for the change shall be referred to the governing body of the incorporated municipality for its recommendation, allowing the governing body 60 days in which to make its recommendation. However, a two-thirds majority of all the members of the district council is required before the council may change the zoning classification of property within any incorporated municipality contrary to the recommendation of the municipality. For purposes of this section the term "incorporated municipality" includes any city, town, village, or special taxing area which has an elected local governing body and performs general municipal functions.

(d) *Custodian; availability of records and copies of documents in Prince George's County.* — (1) In this subsection, "custodian" means the custodian of the records of a zoning map amendment case in Prince George's County.

(2) Before the Commission sends a zoning map amendment case to the district council in Prince George's County, the Commission is the custodian of the records of the case. After the Commission sends a zoning map amendment case to the district council in Prince George's County, the district council is the custodian of the records of the case.

(3) (i) Correspondence or documents submitted to a custodian shall be received only in accordance with any applicable statute, ordinance, rule of evidence, or case law.

(ii) All applications for zoning map amendments and all official correspondence and records relating thereto, prepared or received by the custodian, shall be made available to the public during regular business hours of the custodian, but the custodian may publish rules to prevent this access from unreasonably disrupting its official business. However, under any circumstances, copies of technical staff reports shall be available at the office of the custodian for the public.

(4) (i) In Prince George's County, a person who personally appears at the office of the custodian may obtain, without charge, a copy of a public document if the document:

1. Is of letter or legal size; and
2. Pertains to a specific zoning case, including zoning applications and justification statements.

(ii) The purpose of subparagraph (i) is to supplement any present laws, rules, or policies that the custodian follows when making public documents available.

(e) *Conditional zoning in Prince George's County.* — (1) In approving any local map amendment after July 1, 1968, under this section, the district council for Prince George's County may give consideration to and adopt whatever reasonable requirements, safeguards, and conditions as may in its opinion be necessary either to protect surrounding properties from adverse effects which might accrue from the zoning amendment, or which would further enhance the coordinated, harmonious, and systematic development of the regional district. A statement of these conditions shall be included in the resolution granting the amendment and shall become a part thereof, and remain in effect for so long as the property remains zoned in accordance with the resolution and the applicable zoning classification requested. No building permit, use permit, or subdivision plat may be issued or approved for the property except in accordance with conditions set forth in the resolution. The district council may adopt ordinances and regulations necessary to provide adequate notice, public hearings, and enforcement procedures for the implementation of this section.

(2) An applicant has 90 days from date of approval to accept or reject the land use classification conditionally approved. Should the applicant expressly reject the amendment as conditionally approved within the 90-day period, the zoning classification shall revert to its prior status.

(3) Notwithstanding any other provision of this article no requirements, safeguards or conditions may be imposed by the district council which would require the dedication of land for public use except for roads, streets, alleys, and easements.

(4) If any resolution, or any part or condition thereof, passed by the district council pursuant to this subsection is declared illegal, unconstitutional, or in any way invalid by any court of competent jurisdiction, the zoning category applicable to the property rezoned by the resolution shall revert back to the category applicable prior to the passage of the resolution, and the resolution shall be null and void and of no effect whatsoever.

(f) *Regulation of signs and fences by municipalities in Prince George's County.* — In Prince George's County, municipal corporations, as defined in Article 23A, § 9 (a), shall have concurrent authority within their boundaries with the Department of Inspections and Permits of Prince George's County to seek compliance with zoning requirements insofar as these requirements pertain to signs. Such municipalities may also enact legislation regulating fences erected in front of the building setback lines on all residential property located within the municipality. Enacted ordinances may not be less restrictive than any ordinance in effect or thereafter enacted by the County Council of Prince George's County. (1975, ch. 892; 1976, ch. 857, § 2; 1977, ch. 315; 1983, ch. 57, § 1; 1984, chs. 255, 678; 1986, ch. 247; 1990, ch. 629; 1992, ch. 570; ch. 643, § 1; 1996, ch. 490.)

Cross references. — See Editor's note to § 8-101 of this article.

University of Baltimore Law Review. — For article, "Maryland's Growing Pains: The Need for State Regulation," see 16 U. Balt. L. Rev. 201 (1987).

Legislative policy precludes antitrust liability of county for enacting zoning ordinance. — Provisions of the Regional District Act constitute a clearly articulated and affirmatively expressed State policy to displace free competition among landowners and users of land with local regulation by zoning and planning, so that Prince George's County is immune from antitrust liability for enacting zoning ordinance and denying special exception. *Racetrac Petro., Inc. v. Prince George's County*, 601 F. Supp. 892 (D. Md. 1985), *aff'd*, 786 F.2d 202 (4th Cir. 1986).

Piecemeal rezoning hearings contemplate adversary or trial-type procedure to resolve adjudicative facts. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 376 A.2d 483 (1977), *cert. denied*, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

Whereas comprehensive rezoning by sectional map amendment process does not. — Where the council considers a comprehensive rezoning by the sectional map amendment process, the issues for determination are legislative, not adjudicative, and do not require a judicial or trial-type hearing. *Montgomery*

County v. Woodward & Lothrop, Inc., 280 Md. 686, 376 A.2d 483 (1977), *cert. denied*, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

Rezoning presumed valid. — Where rezoning was comprehensive and bore a substantial relationship to the public health, comfort, safety, convenience, morals and general welfare, it enjoyed a strong presumption of validity. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 376 A.2d 483 (1977), *cert. denied*, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

To obtain vested zoning status, there must be construction on the ground. *Washington Sub. San. Comm'n v. TKU Assocs.*, 281 Md. 1, 376 A.2d 505 (1977).

Merely to allege large expenditures without actual construction on a site cannot vest zoning rights. *Washington Sub. San. Comm'n v. TKU Assocs.*, 281 Md. 1, 376 A.2d 505 (1977).

Supermajority requirement not authorized. — *Montgomery County* was not authorized by the Regional District Act to impose a supermajority requirement for the grant of a special exception. *Mossburg v. Montgomery County*, 329 Md. 494, 620 A.2d 886 (1993).

Applied in Potomac Valley League v. County Council, 43 Md. App. 56, 403 A.2d 388 (1979).

Quoted in JMC Constr. Corp. v. Montgomery County, 54 Md. App. 1, 456 A.2d 931 (1983).

Cited in County Council v. Carl M. Freeman Assocs., 281 Md. 70, 376 A.2d 860 (1977).

§ 8-105. Same — Appeals in Montgomery County.

(a) *In general.* — In Montgomery County, a final action of the district council on any application for a map amendment, within 30 days after the action is taken by the council, may be appealed by any person aggrieved by the action, or by any person, municipality, corporation, or association, whether or not incorporated, which has appeared at the hearing in person, by attorney or in writing to the circuit court for the county which has the power to affirm or reverse the action appealed from, or remand the same to the district council for

further consideration for any reason, or dismiss the appeal as now or hereafter provided by law.

(b) *Procedure.* — Whenever any appeal is taken, a copy thereof shall be served on the district council in the manner provided in Maryland Rule 7-202 (d), and the district council shall promptly give notice of the appeal to all parties to the proceeding before it and, within 30 days after the filing of the appeal, shall file with the courts the originals or certified copies of all papers and evidence presented to the council in the proceeding before it, together with a copy of its opinion and resolution deciding the application. Any party to the proceedings in the circuit court aggrieved by the decision of the court may appeal from the decision to the Court of Special Appeals. The review proceedings provided by this section are exclusive.

(c) *Finality of action; reconsideration.* — The action of the district council shall be deemed to be final, unless the council, within 30 days thereafter on its own motion, for any reason, reconsiders its action. The time for appeal herein provided shall be stayed until any reconsideration is determined and concluded. (1975, ch. 892; 1976, ch. 472, § 15; 1983, ch. 57, § 1; 1984, ch. 255; 1998, ch. 21, § 1.)

Zoning is legislative function. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 376 A.2d 483 (1977), cert. denied, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

Scope of judicial review. — Judicial review of the acts of the zoning authority is restricted and narrow in scope. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 376 A.2d 483 (1977), cert. denied, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

Court does not substitute its judgment for judgment of zoning authority. — Courts decide only whether the zoning action was arbitrary, discriminatory or illegal, and do not substitute their judgment for that of the zoning

authority if its decision is supported by substantial evidence and the issue is fairly debatable. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 376 A.2d 483 (1977), cert. denied, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978).

Applied in *Potomac Valley League v. County Council*, 43 Md. App. 56, 403 A.2d 388 (1979); *Boyd's Civic Ass'n v. Montgomery County Council*, 67 Md. App. 131, 506 A.2d 675 (1986).

Stated in *County Council v. Carl M. Freeman Assocs.*, 281 Md. 70, 376 A.2d 860 (1977).

Cited in *Citizens Coordinating Comm. on Friendship Heights, Inc. v. TKU Assocs.*, 276 Md. 705, 351 A.2d 133 (1976); *Smith v. Edwards*, 292 Md. 60, 437 A.2d 221 (1981).

§ 8-106. Same — Hearings and appeals in Prince George's County.

(a) *Stenographic record.* — In Prince George's County there shall be a stenographic record made by a duly authorized and competent stenographer or reporter of all hearings on petitions for zoning map amendments as provided herein. The stenographic record made may not be destroyed until the time for appeal or rehearing on any petition for zoning map amendments has expired.

(b) *Filing fees; transcript.* — The person, corporation, or party making application for a zoning map amendment at the time of paying the advertising costs shall pay an additional filing fee of \$5. Any person, corporation, or party noting an appeal from the decision of the district council, or who or which for any reason requests a transcript to be transcribed as herein provided, shall pay to the county the cost of estimated costs of transcribing the stenographic record.

(c) *Notice to nearby property owners.* — Each district council may include in its regulations provisions for additional notice of the public hearing on any proposal for amendment of its zoning plan or regulations, to be given to the owners (as they appear on the assessment rolls of the county) of properties adjoining or across the road from, or in the same block as, or in the general vicinity of, the properties involved in the proposed amendment. The notice may be given by mail or by posting of the notice on or in the vicinity of the properties involved in the proposal, or both.

(d) *Definitions for sections.* — For purposes of this section and §§ 8-104 and 8-105 of this article herein, the word “amend” or “amendment” shall be deemed to include any modification of the text or phraseology of a regulation or of any provision of the regulations, or any repeal or elimination of any regulation or part thereof, or any addition to the regulations, or any new regulation, or any change in the number, shape, boundary, or area of the districts, or of any district, or any repeal or abolition of any map or part thereof, or any addition to any map, or any new map, or any other change in the map or maps. For the purpose of this and other sections of this title the words “regulate”, “regulation”, or “regulations” shall be deemed to include “restrict”, “restrictions”, “limit”, “limitations”, “prohibit” and “prohibitions”.

(e) *Appeals authorized.* — In Prince George’s County, any incorporated municipality located in Prince George’s County, any person or taxpayer in Prince George’s County, any civic or homeowners association representing property owners affected by a final district council decision, and, if aggrieved, the applicant may have judicial review of any final decision of the district council. Proceedings for review shall be instituted by filing a petition in the Circuit Court of Prince George’s County within 30 days after service of the final decision of the district council, which may be served upon all persons of record at the district council’s hearing. Copies of the petition shall be served on the district council and all other persons of record in the manner provided by the rules of court. The filing of the petition does not stay enforcement of the district council’s decision; but the district council may do so, or the reviewing court may order a stay upon terms it deems proper.

(f) *Procedure for appeals.* — Within 30 days of service of a petition or within whatever further time as the court may allow, the district council shall transmit to the reviewing court the original or a certified copy of the entire record of proceeding under review. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections to the record when deemed advisable.

(g) *Taking additional evidence.* — If written application by petition to show cause is made to the court before the date set for hearing for leave to present additional evidence on the issues in the case either by the party appealing or any party in interest, and if it is shown to the satisfaction of the court after a hearing thereon that the additional evidence is material and that there were good reasons for failure to present it in the proceedings before the district council, the court shall order that the additional evidence be taken before the

district council upon conditions which the court deems proper, and the case shall be forthwith remanded to the district council for the taking of additional testimony. In cases in which the additional evidence is taken before the district council, the district council may modify or reverse its previous findings and decision by reason of the additional evidence and shall file with the reviewing court, to become part of the record, the additional evidence together with any modifications or new findings or decision.

(h) *Court procedure.* — The review shall be conducted by the court without a jury. In cases of alleged irregularities in procedure before the district council not shown in the record, testimony thereon may be taken in the court. The court upon request shall hear oral argument and receive written briefs.

(i) *Court's action.* — The court may affirm the decision of the district council or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners have been prejudiced because the administrative findings, inferences, conclusions, or decisions are (1) in violation of constitutional provisions; or (2) in excess of the statutory authority or jurisdiction of the agency; or (3) made upon unlawful procedure; or (4) affected by other error of law; or (5) unsupported by competent, material and substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.

(j) *Further right of appeal.* — In Prince George's County, the district council, the applicant, or any party to the circuit court review who is an aggrieved party may secure a review of any final judgment of the Prince George's County Circuit Court under this title by appeal to the Court of Special Appeals. The appeal shall be taken in the manner provided by law for appeals from law courts in other civil cases. Each member of the district council in Prince George's County is entitled to vote on whether the district council shall appeal to the Court of Special Appeals, regardless of whether the member participated in the hearing on the matter or in the decision.

(k) *Applicability.* — This section applies only in that portion of the regional district that lies within Prince George's County. (1975, ch. 892; 1976, ch. 857, § 2; 1983, ch. 57, § 1; 1984, ch. 255; 1987, ch. 11, § 1; 1994, ch. 405.)

"Amendment" in subsection (d) of this section includes sectional map amendment process. *County Council v. Carl M. Freeman Assocs.*, 281 Md. 70, 376 A.2d 860 (1977).

Taking additional evidence. — Subsection (g) of this section does not govern the procedure for presenting additional "outside" evidence of irregularities affecting the proceedings before the Council, such as personal bias; a plain and reasonable reading of this provision reveals a procedure for dealing with the supplementation of substantive evidence not originally presented to the Council that goes directly to the merits of the Council's zoning decision. *Colao v. County Council*, 109 Md. App. 431, 675 A.2d 148 (1996).

General Assembly can provide for appeals from sectional map amendment decisions. — While comprehensive rezoning is

essentially a legislative function, the General Assembly can nonetheless provide for appeals from sectional map amendment decisions if it so desires, and courts may review such decisions to the extent permitted by separation of powers principles. *County Council v. Carl M. Freeman Assocs.*, 281 Md. 70, 376 A.2d 860 (1977).

Appeals from zoning amendment decisions are regulated by subsection (e) of this section. *County Council v. Carl M. Freeman Assocs.*, 281 Md. 70, 376 A.2d 860 (1977).

Appeal to circuit court. — Review of the decision of a county council adopting a sectional map amendment by way of appeal to the circuit court is authorized by subsection (e) of this section, and is governed by the provisions of Subtitle B of Chapter 1100 of the Maryland Rules (see now Rules 7-201 et seq.). *County*

Council v. Carl M. Freeman Assocs., 281 Md. 70, 376 A.2d 860 (1977).

Appeal from circuit court. — A right of appeal of Prince George's County Council's adoption of a sectional map amendment from the Circuit Court to the Court of Special Appeals and to the Court of Appeals is authorized by subsection (j) of this section and § 12-201 of the Courts Article. County Council v. Carl M. Freeman Assocs., 281 Md. 70, 376 A.2d 860 (1977).

Because a county council failed to take proper action in approving the filing of an appeal within thirty days of the final judgment of the circuit court, the appeal was dismissed. County Council v. Dutcher, 132 Md. App. 413, 752 A.2d 1199 (2000).

Quoted in Bucktail, LLC v. County Council, 352 Md. 530, 723 A.2d 440 (1999).

§ 8-107. Board of zoning appeals in Prince George's County.

(a) *Continuation; composition; appointment; terms.* — The board of zoning appeals of Prince George's County, heretofore created, is continued. The board consists of three members, who shall be residents of that portion of the regional district within Prince George's County and appointed by the County Council of Prince George's County. The terms of members shall be four years each, dating originally from their first appointment in 1939.

(b) *Vacancy; meetings; act by resolution; compensation; staff; organization and procedure; oaths; minutes.* — Any member appointed for a vacancy shall serve for the unexpired term. All meetings of the board shall be public, and the members shall organize annually and elect a chairman and vice-chairman. They shall act by resolution, in which two members must concur. The compensation of members shall be as fixed by the County Commissioners of Prince George's County. The County Commissioners may provide the board of zoning appeals with executive and clerical assistance as necessary. The district council of Prince George's County may provide and specify in its zoning regulations general rules to govern the organization and procedure of the board of zoning appeals, which rules shall not be inconsistent with the provisions of this title. The board of zoning appeals may adopt, from time to time, supplemental rules of procedure not inconsistent with this title or such general rules. The board of appeals or the chairman or other officer may administer oaths and compel the attendance of witnesses. The board shall keep minutes of its proceedings. (1975, ch. 892; 1979, ch. 512; 1983, ch. 57, § 1.)

§ 8-108. Extension of nonconforming uses.

A district council may provide, to the degree and upon the terms and conditions as may be set forth in its zoning regulations, for the grant of power to the board of zoning appeals of Prince George's County upon appeal, to permit (1) an extension of a lawful nonconforming use throughout a part or whole of a building in which the nonconforming use lawfully exists; or (2) the restoration or reconstruction of an existing lawful nonconforming use where through fire, or other calamity the use has been destroyed to the extent of not more than 75 percent of the reconstruction value of the building in which the lawful nonconforming use was carried on; or (3) an extension of an existing lawful nonconforming use on the same lot as the lot existed as a single lot

under single ownership at the time of the enactment of the regulation which made the then existing use on the lot nonconforming. Nothing in this section authorizes the validation, ratification, or legalization of any violation of law or regulation existing at the time of the action by the district council under this section. (1975, ch. 892; 1983, ch. 57, § 1.)

§ 8-108.1. When hearings to commence.

In Prince George's County, the people's zoning counsel or any party of record may request the continuance of a hearing under this section. The zoning hearing examiner shall grant a continuance if a required technical staff report has not been filed at least 30 days before the scheduled hearing. If a continuance is granted for this reason, the zoning hearing examiner may not hear the case until at least 30 days after the technical staff report has been filed. (1986, ch. 542.)

§ 8-109. Commercial licenses in residential zones; nonconforming uses generally.

(a) *Licenses not to be issued.* — No clerk of the Circuit Court of Montgomery County or of Prince George's County, no administrative official, no licensing body or board, and no person whatever may issue a license or permit for any commercial or industrial purpose or for the conducting of any commercial or industrial enterprise or business whatsoever in a residential zone, that is, in any district designated on the zone maps as residential within the regional district, unless the purpose, enterprise, or business is allowed by the applicable zoning ordinance under permitted uses or special exceptions granted by the board of appeals.

(b) *Lawful nonconforming uses continued.* — However, in the case of a lawful nonconforming use existing at the time of the enactment of the respective zoning ordinances within that portion of the regional district in Montgomery and Prince George's Counties comprising the Maryland-Washington Metropolitan District, created by Chapter 448 of the Acts of the General Assembly of Maryland of 1927, as amended, the particular use may be continued, and appropriate licenses may be issued, limited, however, to the particular use already existing in each case.

(c) *Alcoholic beverage licenses.* — In addition, the board of license commissioners of Montgomery County, within its discretion, may issue and renew alcoholic beverage licenses as have been heretofore issued by the board for premises on which lawful nonconforming uses exist. No license may be issued which is less restrictive than any which has been issued for the premises heretofore.

(d) *Nonconforming uses outside of metropolitan district.* — In addition, in the case of a lawful nonconforming use existing at the time of the enactment of zoning ordinances under the provisions of this title in that portion of the regional district in Montgomery and Prince George's Counties, respectively, outside the metropolitan district, the particular use which existed at the

effective date of the zoning ordinances, adopted under the authority of this title, may be continued, and appropriate licenses may be issued, limited, however, to the particular use in each case.

(e) *Maps to be furnished.* — For the purpose of carrying out the provisions of this section, the Commission shall supply every clerk, administrative official, licensing body or board, and every other official or body empowered to issue any license or permit, with a copy of the map or maps showing the residential, commercial, industrial, and other zones or districts in the regional district.

(f) *Invalid licenses or permits.* — Every license or permit issued in violation of this section is invalid; and the issuance of the license or permit is a misdemeanor and punishable under the general penalty provisions of this article. (1975, ch. 892; 1983, ch. 57, § 1.)

§ 8-110. Special exceptions and variances to zoning regulations.

(a) *Authorized; votes; approval; appeals.* — (1) A district council in either county, in its zoning regulations, may provide that the board of zoning appeals, the district council, or an administrative office or agency designated by the district council, in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the regulations, may either grant or deny, upon conditions as may be deemed necessary to carry out the purposes of this article, special exceptions and variances to the provisions of the zoning regulations in harmony with their general purposes and intent.

(2) (i) In Montgomery County, the district council in its zoning regulations may provide that the affirmative vote of:

1. At least four members of the board of appeals are required to adopt a resolution that grants, revokes, suspends, amends, extends the time in which to implement, or modifies a special exception; and

2. A majority of the board of appeals is required to adopt a procedural motion regarding a special exception application.

(ii) In exercising its authority under this paragraph, the district council may enact, for any zone, different voting requirements for different uses.

(3) In Prince George's County the district council shall provide for the appeal of decisions of the zoning hearing examiner in special exception and variance cases to the district council. However, if a special exception is contrary to the recommendation of a municipal corporation that has any portion of the property subject to the special exception within the municipal boundaries, the district council shall require a two-thirds vote of all district council members to approve the special exception.

(4) The decisions of the administrative office or agency in Montgomery County shall be subject to an appeal to either the board of appeals or other administrative body as may be designated by the district council. In either county, the appeal shall follow that procedure which may from time to time be determined by the district council.

(5) The district council in either county also may authorize the board of zoning appeals to interpret the zoning maps or pass upon disputed questions

of lot lines or district boundary lines or similar questions as they arise in the administration of the regulations.

(b) *Appeals in Montgomery County.* — In Montgomery County, notwithstanding any provision in Article 25A, § 5 (U), of the Annotated Code to the contrary, a decision by the county board of appeals on applications for zoning variations or exceptions may be appealed within 30 days by any person, municipality, corporation, or association, whether or not incorporated, which has appeared at the hearing in person, by attorney, or in writing, to the circuit court for the county, which may affirm or reverse the decision appealed from or remand it to the board for further consideration for any reason, or dismiss the appeal as provided by law. Any party to the proceedings in the circuit court may appeal from such decision to the Court of Special Appeals. The review proceedings provided by this section are exclusive.

(c) *Report in Prince George's County.* — (1) In Prince George's County, prior to any hearing by a zoning hearing examiner and the district council concerning a request for a special exception for the mining of sand or gravel, a report shall be prepared in accordance with this subsection.

(2) Any report required under paragraph (1) of this subsection shall:

(i) Be prepared by the Commission;

(ii) Comprehensively evaluate the request by analyzing the impact of the proposed mining activities on the surrounding area, considering only the following factors:

1. Noise;

2. Watershed and water quality;

3. Airshed and air quality;

4. Traffic and traffic safety; and

5. Any other environmental factors relating to the health, safety, and welfare of the residents in the affected area; and

(iii) Be paid for by the applicant through a fee for the services performed by the Commission, not to exceed \$8,000, in addition to the initial filing fee. (1975, ch. 892; 1976, ch. 857, § 2; 1979, ch. 591; 1983, ch. 57, § 1; 1984, ch. 679; 1986, ch. 543; 1992, ch. 571; 1996, chs. 481, 490.)

Legislative policy precludes antitrust liability of county for enacting zoning ordinance. — Provisions of the Regional District Act constitute a clearly articulated and affirmatively expressed State policy to displace free competition among landowners and users of land with local regulation by zoning and planning, so that Prince George's County is immune from antitrust liability for enacting zoning ordinance and denying special exception. *Racetrac Petro., Inc. v. Prince George's County*, 601 F. Supp. 892 (D. Md. 1985), *aff'd*, 786 F.2d 202 (4th Cir. 1986).

The Regional District Act is the exclusive source of zoning authority in Montgomery County. *Mossburg v. Montgomery County*, 329 Md. 494, 620 A.2d 886 (1993).

Supermajority requirement not authorized. — *Montgomery County* was not autho-

rized by the Regional District Act or by § 5 of the Express Powers Act to impose a supermajority requirement for the grant of a special exception. *Mossburg v. Montgomery County*, 329 Md. 494, 620 A.2d 886 (1993).

Zoning determination sustained. — Where a county council determined that the sale of commercially available goods was not compatible with other permitted uses in a residential district, and where that determination was reasonable and substantially related to the promotion and protection of the general welfare of the community, it was sustained. *Levinson v. Montgomery County*, 95 Md. App. 307, 620 A.2d 961, cert. denied, 331 Md. 197, 627 A.2d 539 (1993).

Quoted in *Concerned Citizens v. Constellation-Potomac*, 122 Md. App. 700, 716 A.2d 353 (1998).

Cited in *Pan Am. Health Org. v. Montgomery County*, 338 Md. 214, 657 A.2d 1163 (1995).

§ 8-110.1. Special exceptions for rubble landfill in Prince George County — Previous denial.

The District Council of Prince George's County may not approve a special exception to construct or operate a rubble landfill at a site, if an application for a special exception to construct or operate a rubble landfill at the site was previously denied on or after October 1, 1981. (2001, ch. 686.)

Editor's note. — Section 2, ch. 686, Acts 2001, provides that the act shall take effect June 1, 2001.

§ 8-110.2. Same — Three-fourths majority required.

The District Council of Prince George's County may not approve a special exception to construct or operate a rubble landfill at a site without a three-fourths majority vote of the District Council. (2001, ch. 686; 2002, ch. 18.)

Effect of amendments. — Chapter 18, Acts 2002, approved Apr. 9, 2002, and effective from date of enactment, reenacted the section without change.

Editor's note. — Section 2, ch. 686, Acts 2001, provides that the act shall take effect June 1, 2001.

§ 8-111. Appeals to board of zoning appeals of Prince George's County.

(a) *By whom taken.* — Appeals to the board of zoning appeals of Prince George's County may be taken by any person, board, association, corporation, or official aggrieved by the grant or refusal of a building permit or the grant or withholding of an occupancy or use permit or any other administrative decision based or claimed to be based in whole or part upon any zoning regulation or map enacted by the district council of that county.

(b) *Powers of board.* — Upon appeals, the board of zoning appeals has the following powers:

(1) To hear and decide appeals where it is alleged by the appellant that there is error in any refusal of a building, use, or occupancy permit or in any other order, requirement, decision, or determination made by a building official or by the Commission when passing upon an application for a building or other permit or by any other administrative officer or body in the administration of any zoning regulation enacted pursuant to this title. Nothing contained in this paragraph shall authorize the board of zoning appeals to reverse or modify any refusal of a permit or any other order, requirement, decision, or determination which conforms to the provisions of this title and the regulations made under this title and which, therefore, was not erroneous.

(2) To hear and decide, in accordance with the provisions of the regulations enacted by the district council, requests for special exceptions or map interpretations or for decisions upon permits for extensions, substitutions, restorations, reinstatements, or reconstructions of lawful nonconforming uses or other

special questions upon which the board of zoning appeals is required or authorized by the zoning regulations to pass.

(3) If the strict application of the regulation or amendment would result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original enactment of a regulation or amendment or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve the difficulty or hardship, provided relief can be granted without a substantial impairment of the intent, purpose, and integrity of the zone as embodied in the zoning regulations and maps.

(c) *Exception to powers.* — The board of zoning appeals may not make or amend any regulation or map.

(d) *Hearing and notice.* — In exercising its powers the board of zoning appeals, in conformity with the provisions of this title and the zoning regulations, may reverse or affirm, wholly or partly, or may modify the decision appealed from. Before making its decision, the board of zoning appeals shall hold a hearing upon the appeal, notice of the time and place of which shall be sent by mail to the appellant and to the owners of all properties contiguous to or opposite the property affected measured at right angles to the intervening street or streets from the property of the appellant, which notice shall be mailed not less than seven days previous to the time fixed for the hearing.

(e) *Action of board by resolution.* — The action or decision of the board of zoning appeals shall be by resolution, which shall contain a statement of the grounds of its action or decision and which, or a copy of which, shall form part of the minutes or other records of the board. (1975, ch. 892; 1976, ch. 857, § 2; 1983, ch. 57, § 1.)

Applied in *Boyd's Civic Ass'n v. Montgomery County Council*, 67 Md. App. 131, 506 A.2d 675 (1986).

§ 8-111.1. Appeals from decision of board of zoning appeals of Prince George's County; final and binding decisions of the board of zoning appeals.

(a) *Appeal to circuit court; appeal to Court of Special Appeals.* — (1) Any person aggrieved by the decision of the board of zoning appeals of Prince George's County and a party to the proceeding before it may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if the decision is not in accordance with law, to modify or reverse the decision, with or without remanding the case for rehearing as justice may require.

(2) Any party to the proceeding in the circuit court aggrieved by the decision of the court may appeal from the decision to the Court of Special Appeals.

(b) *Final and binding decisions of the board of zoning appeals.* — (1) The board of zoning appeals of Prince George's County shall take any action necessary to enforce any final decision of the board.

(2) Any request or application for a stay from a final decision of the board of zoning appeals of Prince George's County shall be filed in the circuit court of the county.

(3) Unless modified or reversed by the circuit court for the county, a decision of the board of zoning appeals in Prince George's County concerning any nonconforming occupancy or use is binding on the parties and continues in force and effect. (1979, ch. 512; 1983, ch. 57, § 1; 1984, ch. 255; 1987, ch. 251.)

Editor's note. — Section 2, ch. 251, Acts 1987, provides that "this act shall be construed retroactively and shall be applied to and interpreted to affect all actions pending before the Board of Zoning Appeals beginning on or after July 1, 1986."

Quoted in *Landover Books, Inc. v. Prince George's County*, 81 Md. App. 54, 566 A.2d 792 (1989).

§ 8-112. Effect of statewide zoning law.

(a) *In municipalities.* — (1) Except as provided in paragraph (2) of this subsection and for the City of Takoma Park as provided in § 8-112.2 of this subtitle, within the regional district, the zoning powers vested by Article 66B of the Code in any municipality or council of any municipality within the regional district shall be construed to be vested exclusively in and may be exercised within their discretion only by the County Council of Montgomery County or the County Council of Prince George's County, each acting respectively as a district council.

(2) A municipal corporation in Prince George's County shall have concurrent jurisdiction with the County Council of Prince George's County to enforce zoning laws within its corporate limits.

(3) Before exercising the authority conferred by this section, a municipal corporation shall enter into a written agreement with the Prince George's County District Council concerning the method by which the county will be advised of citations issued by a municipal inspector, the responsibility of the municipal corporation or the county to prosecute violations cited by the municipal corporation, the disposition of fines imposed for violations cited by the municipal corporation, the resolution of disagreements between the municipal corporation and the county about the interpretation of the zoning laws, and any other matters that the Prince George's County District Council deems necessary for the proper exercise of this authority.

(b) *In planning commissions of boards of appeals.* — Within the regional district any power vested by Article 66B of the Annotated Code of Maryland in any planning commission or board of appeals shall be construed to be vested exclusively in and may be exercised only by the Commission or the board of zoning appeals created or authorized by this title.

(c) *This article prevails.* — Insofar as the provisions of Article 66B of the Annotated Code of Maryland may be inconsistent with or contrary to the provisions of this title, the provisions of Article 66B shall have no application

within the regional district. (1975, ch. 892; 1983, ch. 57, § 1; 1989, ch. 701; 1997, ch. 93; 2002, ch. 408.)

Effect of amendments. — Chapter 408, Acts 2002, effective Oct. 1, 2002, in (a) (3), substituted "District Council concerning" for "Executive concerning," and substituted

"Prince George's County District Council deems" for "County Executive deems."

Cited in *Mayor of Forest Heights v. Frank*, 291 Md. 331, 435 A.2d 425 (1981).

§ 8-112.1. Zoning ordinances by municipalities in Prince George's County.

(a) *In general.* — Notwithstanding any other section of this article or any other law to the contrary, and with respect to any land within the corporate limits of a municipal corporation in Prince George's County which is within the boundaries of the Maryland-Washington Metropolitan District and is either zoned for residential or commercial use or adjacent to residential or commercial zones, the legislative body of such a municipal corporation in Prince George's County may, by ordinance, for the purpose of the preservation, improvement, or protection of the general character and design of lands and improvements within the corporate limits of the municipality, impose stricter or additional conditions, restrictions, or limitations upon fences, residential parking, and residential storage than are otherwise required by State, regional, or county zoning regulations issued pursuant to State, regional, or county authorities or agencies exercising zoning and planning jurisdiction over the municipal corporation.

(b) *Public hearing required.* — It is further provided that no such ordinance shall be enacted by any local municipal corporation without first providing for full public hearing on all issues involved therein.

(c) *Approval by County Council; certified copy to district council.* — Such an ordinance is not effective until approved by the Prince George's County Council. Any municipal corporation in Prince George's County which enacts zoning ordinances or regulations in accordance with this section shall deliver, within five days after the enactment of the ordinance and at least 30 days prior to the effective date of the ordinance, a certified copy of any such ordinance to the Prince George's district council.

(d) *Indecision by district council.* — Any zoning ordinance enacted in accordance with the authority of this section upon which no decision is rendered by the Prince George's district council after receipt of the certified copy of the ordinance and before the effective date of the ordinance shall be considered disapproved and may not take effect. (1977, ch. 613; 1983, ch. 57, § 1.)

Cited in *Mayor of Forest Heights v. Frank*, 291 Md. 331, 435 A.2d 425 (1981).

§ 8-112.2. City of Takoma Park.

(a) *Enforcement of county zoning ordinances.* — The City of Takoma Park shall have concurrent jurisdiction to enforce the Montgomery County zoning ordinances within its corporate limits.

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(b) *Zoning actions by county contrary to resolution of Mayor and City Council of Takoma Park.* — A two-thirds majority vote of both the planning board and the district council of Montgomery County is required to take any action relating to zoning within the City of Takoma Park that is contrary to a resolution of the Mayor and City Council of Takoma Park.

(c) *Planning actions by county contrary to resolution of Mayor and City Council.* — A two-thirds majority vote of the planning board of Montgomery County is required to take any action relating to land use planning within the City of Takoma Park that is contrary to a resolution of the Mayor and City Council of Takoma Park. (1986, ch. 771; 1989, ch. 701; 1997, ch. 93.)

§ 8-112.3. Exercise of powers in revitalization overlay zones created for Prince George’s County.

(a) *Applicability.* — This section applies to revitalization overlay zones created by the District Council for Prince George’s County.

(b) *Zone situated within municipal corporation.* — (1) Subject to paragraphs (2) and (3) of this subsection, for any portion of a revitalization overlay zone situated within a municipal corporation, the district council may provide that the governing body of the municipal corporation may exercise the powers of the district council in regard to:

- (i) Design standards;
 - (ii) Parking and loading standards;
 - (iii) Sign design standards;
 - (iv) Variances for lot size, setback requirements, and similar requirements;
- and
- (v) Landscaping requirements.

(2) When exercising powers delegated to it by the district council, the governing body of a municipal corporation shall be subject to the substantive and procedural requirements and standards established by the district council for a revitalization overlay zone.

(3) (i) When exercising authority delegated under paragraph (1) of this subsection, the governing body of a municipal corporation may not impose any standard or requirement stricter than standards or requirements that would apply had the district council not delegated its authority to the municipal corporation.

(ii) A delegation under paragraph (1) of this subsection may not impede a development that meets requirements set by the district council for the revitalization overlay zone.

(c) *Zone not within municipal corporation.* — For any portion of a revitalization overlay zone not within a municipal corporation, the district council may provide that the power to approve departures from parking and loading standards, design standards, and any variance from the zoning ordinance may be exercised by the planning board.

(d) *Right of appeal.* — Any party to an action of the governing body of a municipal corporation or the planning board under this section shall have the same right of appeal to the circuit court as the party would have if the action had been taken by the district council. (1993, ch. 335; 1997, ch. 65.)

§ 8-112.4. Delegation of certain powers to municipal corporations.

(a) *Applicability.* — This section applies to any land within the corporate limits of a municipal corporation in the Maryland-Washington Regional District in Prince George's County.

(b) *Delegation of certain powers authorized; substantive and procedural requirements.* — (1) Subject to paragraph (2) of this subsection, the district council may provide that the governing body of a municipal corporation may exercise the powers of the district council in regard to:

- (i) Design standards;
- (ii) Parking and loading standards;
- (iii) Sign design standards;
- (iv) Variances for lot size, setback requirements, and similar requirements; and
- (v) Landscaping requirements.

(2) When exercising authority delegated under paragraph (1) of this subsection, the governing body of a municipal corporation shall be subject to the substantive and procedural requirements and standards established by the district council.

(3) When exercising authority delegated under paragraph (1) of this subsection, the governing body of a municipal corporation may not impose any standard or requirement different from standards or requirements that would apply had the district council not delegated its authority to the municipal corporation.

(c) *Right of appeal to circuit court.* — Any party to an action of the governing body of a municipal corporation under this section shall have the same right of appeal to the circuit court as the party would have if the action had been taken by the district council. (1997, ch. 65.)

§ 8-113. Prior zoning regulations continued.

The zoning regulations duly and validly enacted by the County Commissioners of Montgomery and Prince George's Counties and in force on May 24, 1939, including the maps which at that date accompanied and were a part of the regulations shall be deemed to have been made, enacted, and in force under this title and shall continue in force and effect until they are amended by the district councils respectively as authorized by this title. (1975, ch. 892; 1976, ch. 857, § 2; 1983, ch. 57, § 1.)

§ 8-114. Disposition of waste, sewage and drainage generally.

No permit for the construction or erection of any building or structure of any kind in the regional district shall be granted unless adequate provision is made for disposing of the waste, sewerage, and drainage from the building or structure, and plans therefore presented for the inspection of the building inspector having jurisdiction. This section does not apply to that portion of the regional district in Prince George's County. (1975, ch. 892; 1983, ch. 57, § 1.)

§ 8-115. Building regulations in Prince George's County.

(a) *Powers of County Commissioners.* — The County Commissioners of Prince George's County shall:

(1) Regulate through rules and regulations, which shall be uniform throughout that portion of the regional district in Prince George's County, the construction, improvement, and demolition of all types of buildings within the regional district, as it deems necessary;

(2) Regulate and establish the size of bricks and thickness of walls that are used in the houses to be built in that portion of the regional district;

(3) Provide for the entry into and examination of all buildings, lots, yards, and enclosures and cars, boats, and vehicles of every description in that portion of the regional district in order to ascertain their condition for health, cleanliness, and safety;

(4) Provide for the taking down and removal of buildings, walls, structures, or superstructures in the regional district in Prince George's County that are or may become dangerous, or require owners to move them or put them in a safe and sound condition at their own expense;

(5) Regulate the building and maintenance of party walls, partitions, fences, parapet and fire walls, smoke flues, fireplaces, hot-air flues, boilers, kettles, smokestacks, and stove pipes in that portion of the regional district, and the storage of gasoline and other combustibles or explosives therein;

(6) Provide for and regulate the safe construction, inspection, and repair of all private and public buildings within that portion of the regional district;

(7) Regulate, restrain, or prohibit the erection of wooden or frame buildings within the limits of that portion of the regional district or any thickly populated portion of the regional district and remove the same at the owner's expense, when erected or suffered to remain contrary to law or regulations it adopts;

(8) Regulate the height, construction, and inspection of all new buildings hereafter erected in that portion of the regional district;

(9) Regulate the limits within which it is lawful to erect steps, porticoes, bay windows, or other structural ornaments to houses fronting on any of the highways, streets, avenues, lanes, or alleys of that portion of the regional district;

(10) Regulate the materials used and the manner of installing any and all systems of electric wiring, piping, conduit laying in any building, and regulate the location, manner of installation, size, and area per lot of all advertising structures and restrict the projection of the same over public property;

(11) Generally adopt and enforce, for the whole of that portion of the regional district or for thickly populated portions thereof, all necessary regulations or rules of the same over public property; and

(12) Prescribe fines and penalties for violations thereof.

(b) *Rules and regulations not effective until formally adopted; notice of meeting.* — No rules and regulations adopted by the County Commissioners of Prince George's County shall be valid or effective until they are formally adopted by the County Commissioners at a regular meeting and recorded in a

book kept at its office for that purpose. Prior to the adoption of any rules and regulations, the board shall cause to be published in one or more newspapers of general circulation in that portion of the regional district affected by the rules and regulations, notice of the date, place, and time of the meeting of the board at which the rules and regulations are presented for adoption. The notice shall state that at the meeting a hearing will be held on the proposed rules and regulations, at which hearing an opportunity will be given to all persons having an interest therein to express their views with respect thereto. The notice shall indicate briefly the nature of the rules or regulations to be adopted, amended, or repealed; or if a complete and comprehensive building code is to be considered for adoption, a statement to that effect shall be sufficient. The notice shall be published at least once in each of two consecutive weeks next preceding the date of the meeting, but the board may provide for more extensive notification.

(c) *Recordation of rules and regulations; printed copies deemed prima facie evidence.* — Following the adoption of any rules or regulations, the County Commissioners of Prince George's County shall cause the rules and regulations adopted by it to be recorded in a book or books kept by it for that purpose in its office, and when recorded all persons shall be deemed and taken to have notice thereof, and no actual notice need be proven. It is further the duty of the County Commissioners to cause to be printed for general distribution a sufficient number of copies of the rules and regulations when adopted and recorded, and the printed copy of the rules and regulations shall be prima facie evidence thereof whenever it may be necessary to prove their existence in any judicial proceedings. The rules and regulations now in force in that portion of the regional district within Prince George's County shall be deemed to have been adopted as aforesaid.

(d) *Amendment of rules and regulations.* — The County Commissioners of Prince George's County may change or amend from time to time, as necessary, any rules and regulations, in whole or in part, within that portion of the regional district in Prince George's County. In this event the change or amendment shall be valid and effective when recorded as hereinabove provided.

(e) *Remedies.* — The County Commissioners, in addition to the remedies provided for by this title may enforce the regulations and provisions hereof, and prevent infractions thereof by application to the Circuit Court for Prince George's County in equity for an injunction; and a breach or violation thereof or of any regulations shall be sufficient cause in itself for the issuance of an injunction when applied for, and no further cause need be alleged or sworn.

(f) *Exemptions.* — The County Commissioners of Prince George's County may exempt from the provisions hereof, any town or towns or special taxing areas in which it determines that the building regulations and the enforcement thereof are adequate and equally effective as are the regulations passed by it under the provisions hereof.

(g) *Permits for construction, repair, etc., required.* — The County Commissioners of Prince George's County may issue permits for the construction, repair, erection, or remodeling of all houses, buildings, or other structures in that portion of the regional district; and no person may construct, repair, erect,

or remodel any such structure without first obtaining a permit and paying therefor the fee prescribed by the County Commissioners in accordance with the authority hereinafter set forth.

(h) *Area of operation.* — All rules and regulations adopted by the district council under this section and theretofore adopted by the Commission and commonly called "The Building Code" are operative in, and operative upon, the regional district within Prince George's County as the district is constituted. (1975, ch. 892; 1983, ch. 57, § 1; ch. 449, § 2; 1984, ch. 255; 1992, ch. 22, § 1; 1994, ch. 3, § 1.)

§ 8-115.1. Building requirements in Montgomery County.

(a) *In general.* — Notwithstanding any other law or section of this article to the contrary, the legislative body of a municipal corporation, as defined in § 8-104 (c) of this title, in Montgomery County may by ordinance or regulation, subject to the provisions of subsections (b) and (c) of this section, impose an additional or stricter building requirement than is otherwise required by any State, regional, or county unit that exercises zoning or planning authority over the municipal corporation, provided such authority shall be exercised in addition to, but not in lieu of, the State, regional, or county zoning or planning authority.

(b) *Purposes; applicability.* — A building requirement adopted under this section:

(1) Shall be imposed for the protection of the public health, safety, and welfare, or for the preservation, improvement, or protection of lands and improvements in the municipal corporation; and

(2) May only regulate the construction, repair, erection, or remodeling of single-family residential houses, buildings, or other structures on land zoned for single-family residential use as it relates only to:

(i) Fences, walls, hedges, and similar barriers;

(ii) Signs;

(iii) Residential parking;

(iv) Residential storage; and

(v) The location of structures, including setback requirements.

(c) *Waiver; procedures.* — (1) An ordinance or regulation authorized by this section and enacted by a municipal corporation shall provide a procedure for a waiver from the strict application of the building requirements.

(2) Before adopting an ordinance or regulation authorized by this section, a municipal corporation shall:

(i) Hold a public hearing; and

(ii) At least 30 days before the public hearing, transmit a copy of the proposed ordinance or regulation to the Montgomery County Council. (1992, ch. 573.)

§ 8-116. Enforcement of building and electrical codes in Prince George's County.

The building code and electrical code adopted within that portion of the regional district in Prince George's County pursuant to this title shall be

enforced by the respective officers designated by the county pursuant to the provisions of the county charter and all fees and penalties shall be governed by the provisions of law applicable to a charter county. (1975, ch. 892; 1976, ch. 856; 1983, ch. 57, § 1; ch. 449, § 2.)

§ 8-117. Duties of Board of Education of Prince George's County with respect to buildings.

The Board of Education of Prince George's County shall comply with all the building regulations adopted by the County Commissioners for that portion of the regional district within Prince George's County. The Board of Education also shall provide suitable fire escapes for all school buildings in use if the buildings are more than one story in height, and also provide suitable fire escapes for all the buildings now in course of construction or hereafter erected. If the Board of Education fails to comply with the provisions of this title, the County Commissioners of Prince George's County may contract for the doing of the work and deduct the cost thereof from the amount levied for the support of schools in Prince George's County. (1975, ch. 892; 1976, ch. 856; ch. 857, § 2; 1977, ch. 525; 1983, ch. 57, § 1; ch. 449, § 2.)

§ 8-118. Building permits require access roads.

(a) *Required.* — No permit for the erection of any building within a subdivision within the regional district may be issued unless the road giving access to the lot upon which the building is proposed to be located has the legal status of a public road or was dedicated to public use on May 24, 1939, or corresponds in its exact location with the road shown on a subdivision plat approved by the Commission or with a master plan of highways or plat adopted by the Commission, or is on a private right-of-way or easement approved as adequate by the governing body of the county in which the private right-of-way or easement is located or as provided in subsection (b) of this section.

(b) *Private right-of-way or easement.* — The governing body of the county in which the private right-of-way or easement is located may by law, ordinance, or regulation:

(1) Adopt standards to assure that a private right-of-way or easement is adequate to provide access to a lot on which a building is proposed to be located; and

(2) Delegate to the executive branch or planning board the authority to approve a private right-of-way or easement which is adequate under item (1) of this subsection. (1975, ch. 892; 1983, ch. 57, § 1; ch. 449, § 2; 1991, ch. 369.)

§ 8-119. Building permits generally; zoning permits and certificates.

(a) *Building permits required.* — A building or other structure may not be erected or structurally altered in the regional district without the issuance of a building permit, and a permit may not be given except in conformity with the provisions of this article and of the regulations enacted by the respective

district councils. A building permit is not required for buildings and structures to be used exclusively for purposes of agriculture upon land used exclusively for agriculture. In any part of the regional district in which there does not now exist provision of law or ordinance designating an administrative official by whom building permits are to be issued, the appropriate district council shall designate this official. An act, ordinance, or regulation issued under the authority of this article does not require the approval by the Commission of any building permit in Montgomery County or Prince George's County, and any acts, ordinances, or regulations inconsistent herewith are repealed to the extent of the inconsistency. However, in Montgomery County, all building permit applications shall be referred to the Commission for review and recommendations as to zoning requirements. In Prince George's County, the County Council may provide by ordinance for the referral of some or all building permit applications to the Commission for review and recommendations as to zoning requirements.

(b) *Zoning questions.* — A district council may provide in its zoning regulations for the issuance of use and occupancy permits and for certificates by means of which zoning questions may be raised prior to the preparation of all structural specifications of a building as may be required for a complete building permit. (1975, ch. 892; 1976, ch. 857, § 2; 1980, ch. 793; 1983, ch. 57, § 1; ch. 449, § 2.)

Cited in Washington Sub. San. Comm'n v. TKU Assocs., 281 Md. 1, 376 A.2d 505 (1977).

§ 8-119.1. Grading permits in Prince George's County.

Prince George's County or a department of the county responsible for issuing the permit shall place conditions on a grading permit issued or to be issued under Subtitle 4, Division 3 of the Prince George's County Code (1999 Edition), involving 10 acres of land or more in the Prince George's County portion of the regional district, if the county or the department finds there is or would be an adverse effect, as a result of noise or traffic, on the safety, health, or welfare of the residents in the immediate area of the land that is the subject of the grading permit. (1989, ch. 810; 1991, ch. 55, § 1; 1998, ch. 21, § 1; 2003, ch. 21, § 1.)

Effect of amendments. — Ch. 21, Acts date of enactment, substituted "(1999 Edition)" 2003, approved April 8, 2003, and effective from for "(1995 Edition)."

§ 8-120. Civil enforcement of building permit requirements in Montgomery and Prince George's counties.

(a) *Montgomery County.* — In Montgomery County, the construction, reconstruction, erection, structural alteration, or use of any building or other structure or the use of land or premises in violation of any of the provisions of this title or of any of the provisions of any regulation enacted under this title or of any decision made under this title, is a misdemeanor. The willful issuance

of a building, use, or occupancy permit in violation of any such provision or decision is a misdemeanor. The County Council of Montgomery County or the prosecuting official of Montgomery County may prosecute any violation.

(b) *Prince George's County.* — In Prince George's County, the construction, reconstruction, erection, structural alteration, or use of any building or other structure in violation of the building code of Prince George's County as authorized by this article or by Article 25A of the Code, or the use of land or premises in violation of any of the provisions of this title, or of any of the provisions of any regulation enacted under this title, or of any decision made under this title, or of any zoning text amendment adopted under this title, is a misdemeanor. The willful issuance of a building, use, and occupancy or any other permit in violation of any such provision or decision is a misdemeanor. Prince George's County or the State's Attorney of Prince George's County may prosecute any violation.

(c) *Civil fines and penalties; enforcement; prosecution of violations.* — (1) In addition to all other remedies provided by law, the governing body of Montgomery or Prince George's County may provide by ordinance for the imposition of civil monetary fines or penalties for violations of the provisions of this title, or of any of the regulations enacted under this title, or any decision made under this title, or of any zoning text amendment adopted under this title.

(2) The governing body may provide for the enforcement of the ordinance:

(i) As provided in Article 66B, § 7.02 of the Code, and not subject to an appeal to the board of zoning appeals; or

(ii) By a hearing by an official, board, or agency of the county, and providing for an appeal from that hearing.

(3) The governing body may provide for the county attorney to prosecute violations for which civil monetary fines or penalties are imposed.

(d) *Other forms of relief.* — In addition to all other remedies provided by law, the governing body of Montgomery County or Prince George's County, public officials of any municipality or political subdivision within the regional district, or any neighboring property owner or occupant may institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful construction, reconstruction, erection, alteration, or use. Any court of competent jurisdiction has jurisdiction to issue restraining orders and temporary or permanent injunctions or mandamus or other appropriate forms of remedy or relief. (1975, ch. 892; 1978, ch. 965; 1982, ch. 825; 1983, ch. 57, § 1; ch. 449, § 2; 2000, ch. 61, § 6; 2003, ch. 21, § 7.)

Editor's note. — Section 7, ch. 21, Acts 2003, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a new volume or a replacement volume of the Annotated Code, shall make nonsubstan-

tive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 7 of ch. 21, "county" was inserted following "Montgomery" in (d).

§ 8-121. Prince George's County — Record of hearing.

In Prince George's County, the record of every hearing on a map amendment or special exception shall recite the vote or abstention from voting of each

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member of the district council, stated separately, or the fact that the member was absent. (1975, ch. 892; 1983, ch. 57, § 1; ch. 449, § 2.)

§ 8-122. Same — Witnesses.

In Prince George's County, all witnesses appearing in a hearing before the district council are subject to cross-examination. However, the district council may establish reasonable rules and procedures governing both the cross-examination and the administering of oaths to witnesses appearing to testify at district council hearings, after first conducting a public hearing on the rules and procedures. (1975, ch. 892; 1983, ch. 57, § 1; ch. 449, § 2.)

§ 8-122.1. Representation before county boards, councils, etc.

Notwithstanding any other provision of the Code, the district council for Prince George's County may authorize in its rules and procedures the representation before the Prince George's County planning board, the district council, the zoning hearing examiner, or the board of zoning appeals, of any bona fide civic association or homeowner's association by any duly elected officer of the association regardless of whether that individual is an attorney. (1986, ch. 540.)

§ 8-123. Same — Written findings.

In Prince George's County, no application for a map amendment or special exception, which is contested, may be granted or denied except upon written findings of basic facts and written conclusions. (1975, ch. 892; 1983, ch. 57, § 1; ch. 449, § 2.)

District zoning council's blanket adoption of the planning board's recommendations did not suffice to comply with the clear requirements of this section. *Rodriguez v. Prince George's County*, 79 Md. App. 537, 558 A.2d 742, cert. denied, 317 Md. 641, 566 A.2d 101 (1989).

District council's automatic denial of special exemption inconsistent with Regional Development Act. — A District Council's automatic denial of a special exemption

application without written findings and conclusions of law was inconsistent with the Regional Development Act. *County Council v. Brandywine Enters., Inc.*, 350 Md. 339, 711 A.2d 1346 (1998).

Cited in *Cox v. Prince George's County*, 86 Md. App. 179, 586 A.2d 43 (1991); *County Council v. Metro Sites, Inc.*, 86 Md. App. 428, 586 A.2d 834 (1991); *County Council v. Brandywine Enters., Inc.*, 109 Md. App. 599, 675 A.2d 585 (1996).

§ 8-124. Same — Disapproval.

In Prince George's County, if the district council disapproves, in whole or in part, an application for a map amendment, it may not entertain a subsequent application respecting the same land or any portion thereof within 18 months from the date of the first disapproval, and 24 months from the date of the second or further disapproval. As used in this section, date of disapproval means the date upon which the district council announces its decision, or, in the event of appellate review, the date upon which the Circuit Court announces its decision. In any subsequent application respecting the same land or any

portion thereof, for the same zoning classification or the same special exception purpose, by the same applicant or applicants, the district council may not base its findings solely upon any fact or circumstance which was presented at the earlier hearing. (1975, ch. 892; 1983, ch. 57, § 1; ch. 449, § 2.)

Findings and conclusions of others. — If a council adopts and incorporates as its own the findings and conclusions of others, it must at least make certain that the findings it proposes to adopt comply with the statutory require-

ments of specificity; this means that the adopted findings must be specific and the conclusions clearly articulated. *Colao v. County Council*, 109 Md. App. 431, 675 A.2d 148 (1996).

§ 8-125. Acquisition of land for administration building.

The Park and Planning Commission may not acquire new land for the purpose of constructing an administration building or using land already held by that Commission for the same purpose without the prior approval of the County Executive and County Council of Prince George's County and the County Executive and County Council of Montgomery County, acting jointly. (1975, ch. 892; 1983, ch. 57, § 1; ch. 449, § 2.)

§ 8-126. Zoning classification of Beltsville Agriculture Research Center upon sale.

In the event of the sale of the entire parcel of property or a portion of the parcel of property known as the Beltsville Agriculture Research Center by the United States Department of Agriculture, immediately after the transfer of the land from the United States Department of Agriculture to the buyer of the land, the County Council for Prince George's County, sitting as a district council, shall place and permanently maintain the land in a zoning classification of agricultural open space. (1993, ch. 478.)

Quoted in *County Council v. Brandywine Enters., Inc.*, 109 Md. App. 599, 675 A.2d 585 (1996).

§ 8-127. Acquisition of title upon sale of Glenn Dale Hospital.

In the event of the sale of the entire parcel of property or a portion of the parcel of property known as the Glenn Dale Hospital by the District of Columbia, immediately after the transfer of the land from the District of Columbia to the buyer of the land, the Commission shall acquire title to and incorporate the approximately 150 acres that have not been developed as part of the existing hospital campus into the Commission's park system and maintain the land within the park system in perpetuity. The Commission shall also acquire title to the approximately 60 acres that have been developed as a hospital campus. The Commission may sell, lease, or otherwise transfer the approximately 60 acres to a person who will use the property as a continuing care retirement community in accordance with Article 70B, §§ 7 through 23 of the Code. If the Commission is unable to find a qualified person to carry out the intent of this section, the Commission shall retain possession of the approxi-

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mately 60 acres until the General Assembly of Maryland approves an alternative use. (1994, ch. 361.)

TITLE 9.

PRINCE GEORGE'S COUNTY — ETHICAL AND ELECTIONS STANDARDS.

§§ 9-101 to 9-105. Prince George's County — Ethical and Elections Standards.

Repealed by Acts 1994, ch. 3, § 20, approved February 28, 1994, and effective from date of enactment.

Editor's note. — Section 20, ch. 3, Acts 1994, approved Feb. 28, 1994, and effective from date of enactment, also repealed the title

heading "Title 9. Prince George's County — Ethical and Elections Standards."

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Enforcement Officers' Bill of Rights for t subtitle;

(iv) Shall recognize fundamental distinctions between private and public employment; and

(v) May not regard federal and State law that is applicable wholly or in part to private employment as controlling precedent.

(6) Based on the preponderance of the evidence, the umpire shall submit written findings of fact and conclusions of law to the parties no later than 40 days from the date of appointment.

(7) If the umpire determines that a party named in the complaint has engaged or is engaging in an unfair labor practice, the umpire shall issue an order requiring the party to cease the practice.

(8) An order may:

(i) Include any remedies, including reinstatement of a public employee with or without back pay;

(ii) Require periodic reports on the extent to which the party has complied with an order; and

(iii) Be designed to prevent future unfair labor practices.

(9) A party who is aggrieved by a final decision of an umpire is entitled to judicial review of the decision as provided in paragraph (10) of this subsection.

(10) (i) Within 30 days after the issuance of a final order, a petition for judicial review shall be filed with the Circuit Court for Prince George's County or the Circuit Court for Montgomery County.

(ii) The circuit court may not consider evidence that was not offered in the proceeding before the umpire unless the court determines that the failure to offer the evidence shall be excused because of extraordinary circumstances.

(iii) The circuit court may not overturn the umpire's decision unless the court finds that the umpire's decision is not supported by substantial evidence.

(11) (i) A charging party may petition the Circuit Court for Prince George's County or the Circuit Court for Montgomery County for enforcement of an order of an umpire.

(ii) Unless a petition for judicial review has been filed in accordance with paragraph (10) of this subsection, a petition for enforcement of an order of an umpire may not be used to appeal the final decision of the umpire. (1986, ch. 776; 1993, ch. 563; 1994, ch. 3, § 1; 2002, ch. 248; 2004, ch. 25.)

Effect of amendments.

Chapter 25, Acts 2004, approved April 13, 2004, and effective from date of enactment,

inserted a comma following "machinery" in (g)(1)(xiv).

TITLE 7.

MARYLAND-WASHINGTON REGIONAL DISTRICT.

§ 7-108. Regional district plan and amendments.

Noise regulation. — In contrast to the goal-oriented environmental noise standards set forth in Md. Code Regs. tit. 26, § 02.03.03, tbl. 1, the "Maximum Allowable Noise Level (dBA) For Receiving Land Use Categories" set forth in Md. Regs. Code tit. 26, § 02.03.03, tbl. 2, were mandatory, as the regulation stated

that the tbl. 2 standards were intended to achieve the noise environment goals set forth in Md. Regs. Code tit. 26, § 02.03.03, tbl. 1, but, as the regulation explicitly stated, a person could not cause or permit noise levels which exceeded those specified in Md. Regs. Code tit. 26, § 02.03.03, tbl. 2. *Rochow v. Md. Nat'l*

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